

whenever $\max\{X_i\} > S$ is even less defensible. The confidence level for a citation based on the maximum of five measurements is defined by the value of α when $\mu_i = S$ for all five values of i . Under these circumstances, the probability that at least one of the five measurements would exceed the applicable standard is:

$$\begin{aligned}\alpha &= \text{Prb}\{\max\{X_i\} > S | \mu_i = S \text{ for all } i\} \\ &= 1 - (0.5)^5 \\ &= 97\%.\end{aligned}$$

Therefore, the confidence level at which a citation could be issued is only 3%. At the same time, the probability that none of the five measurements will exceed S is $\beta = (0.5)^5 = 3\%$, so the probability that a citation would be issued is 97%.

III. Conclusion

MSHA, along with other federal agencies, recognizes that in issuing citations, the burden rests with the Agency to show that a violation of the applicable standard occurred. Use of the CTV table will severely limit the risk of an erroneous citation, even when the true dust concentration being measured is exactly equal to or slightly below the applicable standard. If a single measurement falls between S and the CTV, then the measurement does not necessarily provide sufficient evidence of $\mu > S$ to support a citation. Consequently, MSHA cannot justify issuing a citation whenever a measurement exceeds the applicable standard by an arbitrarily small amount. Although citing whenever $X > S$ would result in a smaller probability (β) of erroneously failing to cite, and hence in a greater level of protection for the miner, doing so would result in citations that may not withstand legal challenge. However, as stated earlier in the notice, if the measurement exceeds the applicable standard but not the CTV, MSHA intends to target environments for additional sampling to confirm that dust control measures in use are adequate. These follow-up inspections, in conjunction with operator dust sampling and MSHA monitoring of operator compliance with approved dust control parameters, should further help to protect miners from excessive dust concentration.

References

1. Kogut, J. Memorandum of September 6, 1994, from Jon Kogut, Mathematical Statistician, Denver Safety and Health Technology Center, MSHA, to Ronald J. Schell, Chief, Division of Health, Coal Mine Safety and Health, MSHA, Subject: *Multi-day*

MSHA Sampling of Respirable Coal Mine Dust.

2. Kogut, J. Memorandum of September 6, 1994, from Jon Kogut, Mathematical Statistician, Denver Safety and Health Technology Center, MSHA, to Ronald J. Schell, Chief, Division of Health, Coal Mine Safety and Health, MSHA, Subject: *Coal Mine Respirable Dust Standard Noncompliance Determinations.*

3. Leidel N.A. and K.A. Busch. *Statistical Design and Data Analysis Requirements*. Patty's Industrial Hygiene and Toxicology, Third Edition, Vol. 3, Part A, Chapter 10, 1994.

4. Kogut, J., T.F. Tomb, P.S. Parobeck, A.J. Gero, and K.L. Suppers. *Measurement Precision With the Coal Mine Dust Personal Sampler*. Internal MSHA Report, 1995.

5. Kennedy, E.R., T.J. Fischbach, R. Song, P.M. Eller, and S.A. Shulman. *Guidelines for Air Sampling and Analytical Method Development and Evaluation*. U.S. Department of Health and Human Services, Public Health Service, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 95-117.

Dated: December 19, 1997.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Single, Full-Shift Respirable Dust Measurements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed information collections related to single, full-shift respirable dust measurements.

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: Submit comments on or before March 2, 1998.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203-1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235-1910 (voice) or (703) 235-5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: George M. Fesak, Director, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203-1984. Mr. Fesak can be reached at gfsak@msha.gov (Internet E-mail), (703) 235-8378 (voice), or (703) 235-1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Today, the Secretary of Labor and the Secretary of Health and Human Services published a joint notice in the **Federal Register** finding that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be measured accurately over a single shift in accordance with section 202(f)(2) of the Mine Act.

Implementation of the final finding is expected to better protect miners from

overexposure to respirable coal mine dust and its related health hazards. It is also expected to initially increase the number of citations issued by MSHA inspectors for noncompliance with the applicable respirable dust standard. However, based on previous experience, MSHA anticipates that this increase will level off in future years. Since a citation for noncompliance with the applicable dust standard triggers several regulatory requirements on mine operators that have paperwork implications, the final finding is expected to have the effect of increasing the paperwork burden on mine operators.

Under 30 CFR 70.201(d), 71.201(d), and 90.201(d), a mine operator who receives a citation for a violation of the applicable dust standard is required to take corrective action and then sample the affected mechanized mining unit (MMU), designated area (DA), designated work position (DWP), non-designated work position (NDWP), or part 90 miner until five valid respirable dust samples are collected. Under 30 CFR 70.209, 71.209, and 90.209, persons who are certified to collect respirable dust samples are required to complete dust data cards that are submitted with these samples.

Sections 71.300 and 90.300 require a coal mine operator to submit to MSHA for approval a written respirable dust control plan within 15 calendar days after the termination date of a citation for violation of 30 CFR 71.100, 71.101, 90.100 or 90.101. This plan provides a detailed description of the specific respirable dust control measures used to abate the violation of the respirable dust standard and how each control measure

will continue to be used by the operator to control dust levels and ensure compliance with the applicable standard.

Section 71.301(d) requires the respirable dust control plan to be posted on the mine bulletin board to inform interested persons at the mine of the types and locations of dust control measures that are required to be employed and maintained. However, 30 CFR 90.301(d) prohibits posting of the dust control plan for part 90 miners and, instead, requires a copy be provided to the affected part 90 miner.

A citation for a violation of the applicable standard can also form the basis for requiring an underground coal mine operator to revise the mine ventilation plan under 30 CFR 75.370. The mine ventilation plan is required to specify the respirable dust control measures to be used where coal is being cut, mined, drilled for blasting, or loaded; at dust generating sources in designated areas; and at underground dumps, crushers, transfer points, and haulageways.

Section 75.370(a)(3) requires the mine operator to notify the representative of miners at least 5 days prior to submission of a mine ventilation plan and any revision to such plan. If requested, the mine operator is required to provide a copy to the representative of miners at the time of notification. In the event of a situation requiring immediate action on a plan revision, notice of the revision and, if requested, a copy of the revision shall be given to the representative of miners by the operator at the time of submission. A copy of any proposed revision

submitted for approval shall be made available for inspection by the representative of miners and a copy of any proposed revision submitted for approval shall be posted on the mine bulletin board at the time of submittal, where it shall remain until it is approved, withdrawn, or denied.

Section 75.370(e) requires that, prior to implementing a ventilation plan revision, the mine operator must instruct all persons affected by the revision in its provisions.

Section 75.370(f) requires that the approved ventilation plan and any revisions shall be provided upon request to the representative of miners by the operator following notification of approval, made available for inspection by the representative of miners, and posted on the mine bulletin board within 1 working day following notification of approval. The approved plan and its revisions shall remain posted on the bulletin board for the period of time that they are in effect.

II. Current Actions

Implementation of the final finding will better protect miners from overexposure to respirable coal mine dust and its related health hazards. It is also expected to initially increase the paperwork burden on mine operators.

Type of Review: New.

Agency: Mine Safety and Health Administration.

Recordkeeping: Indefinite.

Title: Single, Full-Shift Respirable Dust Measurements.

Affected Public: Business or other for-profit institutions.

Estimated Burden Hours:

| Cite/reference | Total respondents | Frequency | Total responses | Average time per response (hours) | Hour burden |
|-------------------------------|-------------------|-------------------|-----------------|-----------------------------------|-------------|
| 70.209 | 338 | On occasion | 1,900 | 0.00 | 0 |
| 71.209 | 76 | On occasion | 405 | 0.00 | 0 |
| 90.209 | 3 | On occasion | 15 | | |
| 71.300 | 81 | On occasion | 81 | 3.17 | 257 |
| 71.301(d) | 81 | On occasion | 81 | 0.17 | 14 |
| 75.370 and 75.370(a)(3) | 63 | On occasion | 63 | 3.33 | 210 |
| 75.370(e) | 63 | On occasion | 63 | 0.17 | 11 |
| 75.370(f) | 63 | On occasion | 63 | 0.25 | 16 |
| 90.300 | 3 | On occasion | 3 | 3.17 | 10 |
| 90.301(d) | 3 | On occasion | 3 | 0.33 | 1 |
| Totals | 611 | | 2,677 | 0.19 | 519 |

Total Hour Burden Cost: \$20,082.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintaining): \$116,230.

Comments submitted in response to this notice will be summarized and/or

included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 19, 1997.

George M. Fesak,

Director, Program Evaluation and Information Resources.

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