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**To:** zzMSHA-Standards - Comments to Fed Reg Group <zzMSHA-COMMENTS@DOL.GOV>

**Subject:** Docket No. MSHA-2020-0018

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While I agree the inclusion of VCS is not necessarily a bad thing; however, this proposal seems be anything but ideal. Elimination of the MSHA approval method is worrisome. Complete elimination of the MSHA approval process, which is deemed as being equivalent, seems to undermine this entire effort. The MSHA evaluation process has over 20 years of successful history, and this proposal would see that path replaced. The MSHA approval process has brought about much equipment that cannot receive approval under the recommend VCS which is replacing it. This would include the CPDM and its method for measuring respirable dust, along with numerous other products and devices that are unavailable thru the VCS mentioned. In fact if this was in place five years ago, the CPDM would not exist, nor would a possible silica dust monitor. I am curious why the VCS recommended cannot be used under the 30 CFR Part 6? As an alternate means of approval to the Part 18 requirements? MSHA its self is a regulatory agency with a mission to the public, how is the public interest kept in mind with the standards for evaluation being performed by entities that are not public? The proposed VCS are outside the public purview and free of influence from lawmakers, the public. As an example, the publically elected officials have no power to affect, control, or influence VCS. This means that changes in the interest of public safety will be replace with interest of manufacturers. Entities outside of the United States and outside of the U.S. mining will have the power to change and modify VCS, without a cost benefit analysis nor examination of impact to public safety. Just to put this in prospective, both CHINA and RUSSIA and the manufactures based in said countries will have just as much voting power as the United States and its manufacturers to change or adopt what is and isn't permitted in the VCS. Both countries and their industries are synonymous for the concern in the safety of there workers. I think this is a bad idea.

This will essentially strip MSHA of its ability to evaluate and determine safety of products as MSHA will be contracting out its Subpart B through E. Which undermines the Mine safety and health act of 1977.

This proposal will place a competitive advantage to European manufacturers compared to US manufacturers. How will quality assurance be conducted by MSHA? Will this work hand in hand with IEC or UL to ensure compliance in the approved products. How will changes to VCS certified products be conducted, say for complaints in the industry? Or in the interest of safety?

This proposal seems to skirt the competency of those whom are issuing approval and evaluating products to the VCS. Many of which do not meet the NRTL requirements of OSHA, as such they are not regulatory entities by for profit in nature. How can the public interest in safety be forefront if they are concerned with profits?

The elimination of Subparts B through E will definitely lead to a cost difference. MSHA has not considered the associated total cost regarding the proposed "VCS". Adherence to VCS is performed by non-government agencies, and thus subject to a sliding cost scale, which varies based on the country, which the evaluation is performed, or the level, which it is performed. This cost varies widely between the different certifying bodies as well ( e.g. Underwriters Laboratory vs CSA VS Dekra, etc...).

The typical costs of achieving VCS approval and testing, depending on the complexity, can be excessive. This cost is extremely excessive when compared to MSHA's cost for evaluation which is an equivalent standard. This deficit is broadened when considering a modification to the evaluation can only be done by the same entity whom evaluates initially thereby eliminating competition. As the approvals are non-transferrable between certifying bodies or approval issuer, the cost will not go down only up as competition does not occur

The costs to train personnel to install and maintain VCS approvals and certifications, The cost associated with maintaining the VCS approval/certification/listing, which include auditing, personal competences, and organizational competences, as part of the annual cost of the VCS approval/certification/listing is not clearly defined. As an example In order to use equipment in accordance with the certifying bodies or the approval bodies specified conditions of safe use, personal competencies must be made of those whom install, perform maintenance, and audit such equipment are required. It is apparent from the proposed regulation this consideration was not taken into account. This will require undue burden on the mining industry in the form of mandatory non-governmental training required for mining.

MSHA makes no specific requirement that said equipment which is initially evaluated to a VCS, must maintain the equipment's approval/certification to said VCS. What will stop a manufacturer from cancelling the listing after its initial VCS approval/evaluation? Should this be required then there will be a fee to maintain this approval/certification, these fees are indirect fees and will be quite impactful.

These costs may be drops in the bucket for many larger manufacturers or

mine operators; it creates a competitive disadvantage for several mid to small operators or manufactures. This economic impact will greatly change the landscape in the U.S. mining sector as a whole, essentially pushing out small business and as history has shown us innovation is often performed by smaller entities.

Additionally should an accident occur and the VCS approved product is relevant to determining what happened, MSHA, the victim and the stakeholders will be at the mercy of the certifying bodies whom approved/certified products to the VCS. How will the records of the evaluation of the product be made available to the interested parties? It is unclear on whom the burden of proof will rest with in circumstances where the VCS approved product causes an accident?

The proposed VCS standards mentioned are not free to the public, how will MSHA ensure the included documents are provided free of charge to the average citizen in the future? The proposed VCS documents require a substantial cost to purchase and own this will inevitably push out small business. MSHA offers its evaluation criteria, procedures, and test plans free to the public, the VCS do not do this, how will this be addressed after implementation?

*Logan Rands*