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## II. Background

### A. Procedural History

On July 7, 2000, the Mine Safety and Health Administration published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**: Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust (65 FR 42122). A notice of public hearing and close of record was also published in the **Federal Register** (65 FR 42186) on July 7, 2000. During August 2000, three public hearings were conducted in Morgantown, West Virginia; Prestonsburg, Kentucky; and Salt Lake City, Utah. Transcripts of those proceedings were made available to the public. The close of the rulemaking record was originally scheduled for August 24, 2000. In response to requests from commenters, an extension of the comment period for the NPRM was published in the **Federal Register** (65 FR 49215) on August 11, 2000; the rulemaking comment period was extended to September 8, 2000. Supplementary statements and data postmarked on or before the close of the record, September 8, 2000, were included in the rulemaking record and made available to the public.

Many commenters on the proposed rule urged MSHA to withdraw the proposed rule and publish another. In their opinion, the agency failed to adequately address the concerns of mine operators and ignored other reforms in the dust sampling program urged by coal miners since the mid 1970s or that were recommended by the Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Workers (Dust Advisory Committee) and the NIOSH Criteria Document addressing respirable coal mine dust.

After carefully considering all the facts, issues, and concerns raised by commenters during this rulemaking, MSHA concluded that, to proceed to a final rule would not be in the best interest of miners' health or the mining community. The Agency is re-proposing

for further public comment, the rule which is the subject of this rulemaking.

### B. Overview of Proposed Rule

In preparing this proposed rule, MSHA has responded to comments that were made to the July 7, 2000 proposed rule. However, since this proposed rule differs from the earlier proposed rule in several areas, the agency may not have addressed each concern that was identified by the earlier commenters.

MSHA believes that the proposed rule would significantly improve miners' health protection from the debilitating effects of occupational respiratory disease by limiting their exposures to respirable coal mine dust to no more than the applicable dust standard on each shift.<sup>1</sup> Accordingly, this proposed rule revises 30 CFR part 70, subparts A, B, and C; amends two existing sections of part 75; and revises part 90, subparts A, B, C, and D.

Under this proposed rule, MSHA would be responsible for all compliance and abatement sampling, which is currently being carried out by the operator. This includes frequent sampling of each mechanized mining unit (MMU) and part 90 miner, sampling of outby Designated Areas (DAs) and occupations, and abatement sampling. This proposed rule specifies that compliance and abatement determinations will be based on the results of single samples. Also, only MSHA samples would be used to set a reduced dust standard when the quartz content of the respirable dust exceeds five percent.

In response to comments raised in the earlier proposed rule, mine operators will continue to play a role in monitoring the mine environment. The proposed rule requires each underground operator to verify, through sampling, that the dust control parameters specified in a mine ventilation plan are effective in controlling the concentration of respirable coal mine dust and quartz dust at or below the verification limits of 2.0 mg/m<sup>3</sup> and 100 µg/m<sup>3</sup> respectively. For a sample to be valid for verification purposes, the amount of material produced must be at or above the "verification production level" or VPL. The VPL is defined as the tenth highest production level recorded in the most recent 30 production shifts. In addition, the engineering or environmental control parameters must not exceed 115% of the quantities specified in the ventilation plan and the

sampling must take place over the entire production shift.

The dust control parameters specified in mine ventilation plans must be designed to maintain dust concentrations at or below the applicable standard on each shift. If during the initial verification sampling, the VPL is achieved and dust concentrations are sufficiently low, the district manager could approve a plan based on one shift of sampling. However, if dust concentration measurements are higher, or if the actual production was less than the VPL, MSHA will require the operator to sample additional shifts. All verification samples would be submitted to MSHA for analysis. However, mine operators would not be cited if sample results show an overexposure so long as the operator takes steps to identify and correct the condition that caused the verification limit to be exceeded.

Also, to confirm the continued effectiveness of the plan parameters, mine operators would be required to sample quarterly each producing MMU designated by MSHA under the same conditions that were in place when the plan parameters were initially verified. As in the earlier proposed rule, mine operators would be required to maintain records of the total amount of material produced by shift for each MMU.

In the earlier proposed rule, commenters expressed concern about a provision in the July 7, 2000 proposed rule allowing the use of supplementary controls (powered, air-purifying respirators (PAPRs) and administrative controls), on an interim basis, in mines utilizing longwall mining technology. Commenters offered a wide range of opinions on this part of the proposed rule. Some commenters supported MSHA's decision to allow the use of supplementary controls, but criticized the proposed rule for being too restrictive. Other commenters objected to the proposed provision, claiming that the requirement was inconsistent with the provision of the Mine Act which prohibits respirators to be used as substitutes for engineering controls. These commenters were also concerned that operators would have no incentive to implement available engineering controls once they are permitted to use supplementary controls as proposed.

This proposed rule recognizes that there may be circumstances where, even after implementing all feasible engineering or environmental controls, a mine operator may be unable to maintain concentrations at or below the verification limits. This includes operations that employ longwalls or other mining systems. In those

<sup>1</sup> For details, see the Quantitative Risk Assessment and Significance of Risk Sections.