

of five 8-hour exposure measurements. (See III.A.2. Post-1980 Sampling Program). Under this proposed rule, each MMU will average significantly more compliance determinations annually using the results of single sample measurements taken by MSHA personnel (30 CFR 70.202).⁴ This increase does not reflect the additional compliance determinations that will be made as a result of sampling, concurrently with MMUs, each intake DA, roof bolter DA and outby occupations.

The new sampling program will be far more effective in monitoring the quality of the mine air that miners must breathe, and in preventing overexposures on individual shifts, because MSHA will be making compliance determinations using measurements that are more representative of the dust concentrations to which miners are exposed on individual shifts. As such, MSHA believes the new MSHA sampling program addresses the NIOSH recommendation that sampling be conducted "frequently enough that a significant and deleterious change in the contaminant generation process or exposure controls is not permitted to persist" (NIOSH, 1995, p. 85).

Significant progress in monitoring technology has been made since MSHA published the earlier proposed rule on plan verification. The agency has been informed by NIOSH that a continuous dust monitor may be available for in-mine use by the middle of 2004. Accordingly, as recommended in the criteria document, MSHA is proposing a new standard that would permit operators to use this new technology in conjunction with existing dust controls specified in the ventilation plan to prevent overexposures on individual shifts.

Today's proposed rule does not adopt all the Criteria Document recommendations since many of the recommendations are outside the scope of these rules. However, MSHA continues to be committed to the principles that "preventive efforts [must] be focused primarily on reducing work exposures (NIOSH, 1995)."

The Secretary of Labor and the Secretary of Health and Human Services believe that miners' health will be further protected from the debilitating

effects of occupational respiratory disease by limiting their exposures to the applicable dust standard through the implementation of the single sample rule which conforms to the NIOSH Accuracy Criteria. Furthermore, as stated by NIOSH during the hearings:

NIOSH does support efforts by MSHA and anyone else that will reduce miners' exposures to dust and silica dust and also eliminate or at least reduce significantly the incidence of the diseases * * *.

MSHA believes that this proposed plan verification rule provides an improved program for measuring, monitoring, and reducing overexposures to respirable coal mine dust and quartz dust, under typical mining conditions. As such, it greatly advances the level of health protection afforded underground miners and is consistent with recommendations issued by NIOSH in its Criteria Document.

F. Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers

On January 31, 1995, the Secretary of Labor established the *Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers* (Dust Advisory Committee). The Dust Advisory Committee was chartered to "make recommendations for improving the program to control respirable coal mine dust in underground and surface mines in the United States." The Dust Advisory Committee identified and addressed many of the same issues considered by the Task Group. Findings and consensus recommendations were developed for each issue (MSHA, 1996). The Dust Advisory Committee concluded that the dust control portion of the mine ventilation plan is the key element of an operator's strategy to control respirable dust in the work environment. They concluded that the initial evaluation, approval, in-mine verification and monitoring to demonstrate the effectiveness of the operator's proposed dust control plan is critical for the protection of miners from lung disease. Also, believing that the credibility of the current system of mine operator sampling to monitor compliance with exposure limits has been severely compromised, the Dust Advisory Committee concluded that restoration of miner and mine operator confidence in the respirable coal mine dust sampling program should be one of MSHA's highest priorities. Accordingly, there was unanimous agreement that in order to restore confidence in the program MSHA should take full responsibility for all compliance sampling currently

being carried out by mine operators under 30 CFR parts 70 and 90.

The November 1996 Dust Advisory Committee Report recommended numerous improvements for the federal program to protect miners from simple CWP, PMF, and silicosis. Of these, the following have been incorporated in this proposed rule:

1. MSHA will take full responsibility for all compliance sampling (periodic and abatement) at a level which ensures that representative samples are collected of respirable dust exposures under usual conditions of work without adversely impacting the Agency's resources and responsibilities.

2. Operators would be required to verify, through sampling, the effectiveness of the dust controls in the ventilation plan prior to approval by MSHA. The plan must be verified utilizing only those controls that are listed in the plan. In addition, mine operators would sample designated MMUs quarterly to ensure that the dust controls continue to protect miners from overexposure.

3. MSHA will redefine the range of production levels which must be maintained during sampling to verify the plan. The value will be sufficiently close to maximum anticipated production levels in order to reasonably ensure that the plan is effective under typical operations.

4. MSHA will review compliance and production records to determine when there is a need for plan verification and modification.

5. MSHA would allow mine operators to use newly developed technology to continuously monitor the work environment and prevent overexposures on individual shifts.

This proposed rule is intended to eliminate overexposures on individual shifts and to restore the confidence of miners and mine operators in the respirable coal mine dust sampling program by addressing the shortcomings identified by the Task Group and the Dust Advisory Committee in the current respirable coal mine dust program. This proposed rule would revise the operator dust sampling programs under 30 CFR parts 70 and 90 and require the implementation of mine ventilation plans demonstrated to be effective in maintaining respirable dust at or below applicable dust standards on each shift. These ventilation plans will be verified through sampling by the mine operator, and the plans' effectiveness may be monitored on a quarterly basis by the operator. MSHA intends to periodically monitor operator verification sampling and on a recurring basis will conduct sampling on each MMU to assure

⁴ On a re-occurring basis MSHA will sample an average of five different occupations on each producing MMU. Since every measurement will be compared with the CTV corresponding to the applicable dust standard in effect, MSHA will be making significantly more compliance determinations yearly than under the current operator and MSHA sampling programs combined.