

compliance with the provisions of the ventilation plan and the applicable dust standard. A notice reopening the record regarding the use of single-shift sample measurements of respirable coal mine dust to determine average concentration is also published in today's **Federal Register**.

MSHA recognizes that the Dust Advisory Committee made several recommendations that also impact on surface coal mine workers. These surface coal mine issues are beyond the scope of this proposed rule and will be addressed by the Agency at a later date.

In response to comments received, MSHA has specifically stated in this proposed rule that the representative of miners has the right to observe MSHA sampling with no loss of pay as recommended by the Dust Advisory Committee. The proposed rule also allows the miners' representative the opportunity to participate in operator sampling to verify the ventilation plan. However, such participation would be with no loss of pay, only when MSHA personnel are present to observe that sampling. This proposed rule does not specifically address the committee's recommendations concerning specialized miner training on verification sampling procedures. However, MSHA does intend, during the implementation of any final rule, to provide training to miners, miners' representatives and mine operators on the requirements of the new regulations. In addition, agency personnel are available to provide training to miners and their representatives on the verification procedures as needed.

This proposed rule does not incorporate full-shift sampling as recommended by the Dust Advisory Committee. In this proposed rule, MSHA does require that verification and operator quarterly sampling occur for the entire production shift since the purpose of that sampling is to evaluate the effectiveness of the dust controls on the MMU. Therefore, outby travel time is not included. With regard to compliance sampling by MSHA, the agency believes that sampling portal to portal for the entire shift or eight hours, whichever is less, provides the agency with sufficient data to determine if the dust control measures outlined in the ventilation plan are adequate and being followed or to determine if overexposures are occurring.

Although the Dust Advisory Committee also recommended that MSHA adjust the exposure limit to account for extended work weeks, such a change is considered to be outside the scope of this rulemaking.

MSHA has clarified in this proposed rule that the Secretary will cite for overexposure when an MSHA sample demonstrates that the applicable dust standard has been exceeded, based on the citation threshold value (CTV). In response to concerns that, by using a CTV, MSHA is increasing the standard, MSHA has clarified that respirable dust concentration levels must always be maintained at or below the applicable dust standard. In order to obtain ventilation plan approval from MSHA, operators must demonstrate that the dust control parameters adequately prevent excessive dust concentrations on individual shifts. The plan's effectiveness is evaluated against the applicable dust standard itself—not the CTV—and must be demonstrated at a high level of confidence.

This proposed rule also provides for the limited use of measures to supplement engineering or environmental controls for exposure control. These supplemental measures would be permitted at certain times when the Administrator for Coal Mine Safety and Health has determined that all feasible engineering and environmental controls have been applied and the mine operator is unable to verify the ventilation plan. Supplementary controls may also be approved by MSHA for short-term use to protect individual miners when operators encounter intermittent, adverse conditions under which exposures cannot be maintained within the applicable standard using the approved dust control parameters.

Finally, MSHA received comments suggesting that this rule address the Dust Advisory Committee recommendation to establish a separate silica standard. This issue is outside the scope of this rule.

III. General Discussion

A. Proposed Reforms to the Respirable Dust Monitoring Program

One of the Dust Advisory Committee's key recommendations was that MSHA take full responsibility for all compliance sampling at a level which assures representative samples of respirable dust exposure under usual conditions of work. This was based on the belief that one of MSHA's highest priorities must be to restore the confidence of miners and mine operators in the respirable coal mine dust sampling program.

Accordingly, MSHA is proposing to revise the operator dust sampling programs under current 30 CFR parts 70 and 90 and to take full responsibility for all compliance sampling (*i.e.*, periodic

and abatement sampling) in a manner that it believes will be more protective than the current operator sampling program. MSHA intends to monitor miners' dust exposure and compliance with the dust control provisions of the approved mine ventilation plan, or with the respirable dust control plan for a Part 90 miner at underground mines, in accordance with the procedures and guidelines established in Chapter 1 of the Coal Mine Health Inspection Procedures Handbook.

(a) Compliance Sampling

MSHA will routinely collect samples from the working environment of the DO, Part 90 miners and, if available, four or more other occupations working in each producing MMU. The data from this sampling will be utilized by MSHA to formulate an effective compliance sampling strategy that focuses on the performance of individual sampling entities and to target MMUs for operator quarterly sampling. The strategy will be detailed in the Agency's respirable dust inspection procedures.

Each DA in by the section dump point, such as intake and roof bolter DAs, and other DAs that can be sampled concurrently with the MMU will also be sampled routinely. If the MMU sampled is operating with approved supplemental control measures, the five or more occupations sampled will include the DO and all miners whose exposure is being controlled through the use of PAPRs or verifiable administrative controls.

Since MSHA's inspections are unannounced, the primary objective is to assess the respirable dust conditions to which miners are exposed under the operating conditions in effect at the time of sampling (*i.e.*, production level, air quantities and velocities, *etc.*). All respirable dust samples collected will be considered valid, unless voided by MSHA for other reasons, such as a malfunctioning pump. Because the primary purposes are to measure the quality of the mine air miners breathe and to evaluate the operating conditions on a particular shift, the Agency believes there is no reason to invalidate any sample if a certain level of production is not attained as under the previous sampling procedures. Compliance sampling results, however, will provide MSHA personnel with sufficient information to make a sound engineering judgement about the effectiveness of the dust control parameters in use.

Also, since the purpose of this sampling is not intended to evaluate plan effectiveness, the term "full shift" for purposes of compliance and