

abatement sampling will continue to mean the entire work shift including travel time but excluding any time in excess of 480 minutes. This is different from the definition of "full shift" that is proposed for verification sampling. For purposes of verification sampling, "full shift" would mean an entire work shift during which material is produced by a MMU. MSHA solicits comments on whether full shift for compliance sampling should be defined in the same way as for verification sampling.

MSHA is proposing to continue the current policy of sampling outby locations only once per year. The historical data that has been collected by MSHA personnel at outby locations confirms our belief that, if the working sections are in compliance with the applicable dust standard and if controls are in place at outby dust generating locations, workers throughout the mine are being protected from overexposure. MSHA personnel will continue to sample each DA located outby the section dump point on a production shift and any other dust-generating sources that can be sampled concurrently with the DA.

MSHA will issue a citation for noncompliance when a valid single sample measurement, expressed as an equivalent dust concentration, meets or exceeds the Citation Threshold Value (CTV) corresponding to the applicable dust standard in effect.

The current CTVs are contained in Table 70.2 of this proposed rule. The CTVs and an explanation of how they were derived was originally published in the **Federal Register** notice of February 3, 1998 (63 FR 5687), entitled "Coal Mine Respirable Dust Standard Noncompliance Determinations." As explained in that notice and in Appendix "C" of the current notice of proposed rulemaking, each CTV is calculated so that citations are issued only when a single-shift measurement demonstrates noncompliance at least at a 95 percent confidence level.

Noncompliance determinations based on single-shift measurements will reduce the chances for failure to cite cases of noncompliance. According to the federal sampling inspections conducted in 1995, only 132 MMUs were found to be in violation of the applicable dust standard. These MMUs were cited under the existing enforcement policy of measurement averaging, compared to 545 MMUs that would have been citable using single sample measurements in combination with the CTV table. This clearly demonstrates that the new enforcement strategy will not compromise miners' health, instead it would have identified

413 additional instances of overexposure. Otherwise, these overexposures would continue to go uncorrected under the previous policy of measurement averaging.

Many commenters believed that miners would receive greater protection if MSHA cited for noncompliance whenever any single-shift measurement exceeded the applicable dust standard. MSHA has carefully considered, but rejected this suggestion. Such citations may not be sustained with a sufficient degree of confidence for enforcement action. If the mine environment is sufficiently controlled, the likelihood that a particular measurement exceeds the applicable dust standard, but not the CTV, due to measurement error, can actually exceed the likelihood that the measurement exceeds the standard due to excessive dust concentration. A thorough technical discussion of this issue is provided at 63 FR 5709–5712 (Appendix D of the **Federal Register** notice cited above) and is incorporated into this notice by reference. Basing noncompliance determinations on a single sample measurement, in conjunction with the CTV table, will improve working conditions for miners.

Many commenters contended that a policy of citing in accordance with the CTV table, rather than citing whenever a measurement exceeds the applicable dust standard, would effectively increase the allowable dust concentration limit. These commenters expressed concern that MSHA was raising the applicable dust standard when it proposed to cite violations only when the measurement demonstrated noncompliance at a high level of confidence.

The CTVs do not raise the applicable dust standard. Instead, MSHA must ensure a sufficiently high level of confidence in noncompliance determinations to withstand a legal challenge. For those MMUs with measurements above the applicable dust standard but below the CTV, MSHA will thoroughly review their dust control parameters. Special emphasis will be directed to working environments required to comply with standards below 2.0 mg/m³. As a result of such reviews MSHA may initiate additional sampling.

The Secretary has concluded that using single sample measurements for noncompliance determinations in accordance with the CTV table neither increases nor decreases the applicable dust standard. Operators are required to maintain compliance with the applicable dust standard at all times. Dust controls must be verified as adequate to maintain dust

concentrations at or below the applicable dust standard on all shifts, not merely at or below the CTV. If a measurement exceeds the applicable dust standard by an amount insufficient to warrant citation—that is, the level does not meet or exceed the CTV—MSHA will target that mine or area for additional sampling to ensure that dust controls are adequate.

(b) Abatement Sampling

Under this proposed rule, MSHA would also assume responsibility for all abatement sampling. As recommended by the Dust Advisory Committee, MSHA would utilize single samples to demonstrate abatement. Since the criteria under which the effectiveness of ventilation plans are required to be verified are significantly more stringent than those for compliance sampling, MSHA does not anticipate issuing many citations to MMUs and sectional DAs.

When a mine operator is cited for violation of the applicable dust standard, MSHA will require that approved respiratory equipment be made available to the affected miners in accordance with existing § 70.300 of this part. The mine operator also will be required to review the dust control practices to identify the cause of the excessive dust concentration and correct any deficiencies within the abatement period fixed in the citation.

The mine operator must notify the district manager of the corrective measures taken within 24 hours of implementation to enable MSHA to determine whether abatement or verification sampling should be scheduled. This determination will be based on the review of the information the mine operator provides and the latest inspection reports documenting the measured quantities of the dust control parameters that were in use at the time the citation was issued.

If it is determined that the existing dust control parameters are likely to be adequate to maintain compliance, the district manager will initiate abatement sampling under § 70.218. For example, if the operator believes that the overexposure was caused by improper work practices, the proper course of action would be to review these work practices with the affected miners rather than requiring the operator to upgrade the engineering or environmental controls. Since there was no need to change the plan parameters, MSHA would initiate abatement sampling in this particular case.

If, on the other hand, the district manager determines that the dust control parameters may not maintain respirable dust levels at or below the