

addition of new regulatory text. Other changes were made in response to previous commenters to make them consistent with the common usage of such terms. For example, under this new proposed rule, the Agency's definition of the term "concentration" has been changed to reflect the conventional definition. In doing so, it was necessary to include and define a new term "equivalent concentration," which originally appeared within the proposed definition of the term "concentration" in the previous proposed rule.

This proposed rule also defines new terms to clarify the process of verifying the adequacy of the dust control parameters specified in a mine ventilation plan in controlling respirable dust in a mechanized mining unit. Specifically, MSHA provides definitions of "critical value," "protection factor," "verification limits," and "verification production level." Finally, the definition of "normal production shift" would be removed to be consistent with the proposed revocation of operator sampling requirements for purposes of determining compliance with the applicable dust standard.

The proposed rule also includes other terms like "feasible" for example, which have not been defined. The term as used applies to the suitability of the types of engineering or environmental controls required to control respirable dust under prescribed operating conditions. Since individual mine conditions would dictate the type of engineering or environmental controls to be considered as suitable candidates, MSHA has refrained from providing an explicit definition of this term. Instead, as noted in the discussion under section III.E. of this preamble, MSHA intends to follow the Federal Mine Safety and Health Review Commission case law as to what constitutes a feasible control for enforcement purposes. The Agency further notes in that discussion that the final determination of whether a particular operator has implemented all feasible engineering or environmental controls would be made by the Administrator for Coal Mine Safety and Health. That determination would be based on the best available information and on the combined experience and engineering judgement of an MSHA expert panel.

The following explains the new and revised definitions of terms that are used in the proposed rule. Please closely examine the context of the term as used in each proposed section.

#### Administrative Control

"Administrative control" would mean a work practice intended to reduce an individual miner's exposure to respirable dust at the assigned job position or occupation by altering the way in which the assigned work is performed. Examples include rotation of miners to areas having lower concentrations of respirable dust, altering the way in which specific tasks are performed, rescheduling of tasks, and modifying work practices to reduce exposure. An "administrative control" must be (1) capable of being objectively reviewed and monitored to confirm that it has been properly implemented, (2) clearly understood by the affected miners for the controls to be effective, and (3) applied consistently over time.

#### Approved Sampling Device

"Approved sampling device" would mean a sampling device approved by the Secretary and the Secretary of Health and Human Services under part 74 (Coal Mine Dust Personal Sampler Units) of this title; or approved by the Secretary when it has been demonstrated that a respirable dust concentration measurement can be converted to a concentration measurement equivalent to that obtained with an approved sampling device. Under the proposed rule, MSHA will continue to use sampling devices approved by NIOSH pursuant to existing 30 CFR part 74. To accommodate the adoption of advanced sampling devices in the future such as continuous respirable dust monitors, the proposed rule would permit the Secretary to approve and use any technologically advanced sampling device that should become available in the future but could not be approved under the regulatory requirements of 30 CFR part 74.

Therefore, under the proposed rule, any newly developed sampling instrument would be considered an approved device pursuant to this definition when the Secretary demonstrates that the respirable dust concentration measured by the new instrument can be converted to a concentration measurement equivalent to that obtained by a device approved under 30 CFR part 74 of this title.

To encourage greater innovation in sampler design without compromising accuracy, comments are specifically solicited on this approach of approving sampling devices. MSHA also solicits comments on an alternative approach based on the International Standards Organization (ISO) definition of respirable dust.

#### Certified Person

The existing definition would be modified by removing references to existing §§ 70.202 and 70.203. The provision requiring the use of a certified person to conduct sampling is being transferred to revised § 70.201. Existing § 70.203 which requires approved sampling devices to be maintained and calibrated by a certified person will be retained and redesignated as § 70.202.

#### Citation Threshold Value (CTV)

"Citation threshold value" would mean the lowest acceptable equivalent dust concentration measurement demonstrating that the applicable dust standard has been exceeded at a high level of confidence and at which MSHA would cite an operator for a violation of §§ 70.100 or 70.101 under proposed § 70.218. Since MSHA would be assuming responsibility for all compliance sampling under this proposed rule, a determination of noncompliance would be based solely on the results of single-shift samples collected by MSHA. Appendix C explains how each critical value listed in Table 70-1 was derived. Each CTV is calculated to ensure that a citation will be issued only when a single-shift sample demonstrates noncompliance with at least 95 percent confidence.

#### Concentration

The existing definition would be modified by replacing the term "substance" with "respirable dust" to more clearly convey the meaning under the proposed rule.

#### Control Filter

"Control filter" would mean an unexposed or clean filter cassette of the same design and material as the exposed filter cassette used for sampling that is pre- and post-weighed on the same day as the exposed filters. Its use is intended to eliminate the potential for any bias that may be associated with day-to-day changes in laboratory conditions or introduced during storage and handling of the filter capsules. The control filter is used to adjust the resulting weight gain obtained on each exposed filter capsule. That is, any change in the weight of the control filter will be subtracted from the change in weight of each exposed filter.

#### Critical Value

"Critical value" would mean the maximum acceptable equivalent dust concentration measurement demonstrating that the applicable verification limit has been met at a high level of confidence. Appendix A