

used by the operator and federal mine personnel, MSHA will institute a program to monitor the daily production of filter cassettes weighed to the nearest microgram (μg) by the manufacturer, MSA. The program will conform to MIL-STD-105D, which defines the criteria currently used to monitor the quality of pre-weighed filters used in the current operator bi-monthly sampling program.

Since the control filter will be used to adjust the resulting weight gain obtained on each exposed filter cassette, the control filter must have the same pre-weight date as the filter cassettes to be used for sampling on the same shift. The pre-weight date is noted on the dust data card. Failure to follow these instructions will be cause for voiding the sampling results. Only one control filter will be required for each MMU per shift sampled. To prevent exposure to the mine environment, the plugs attached to the inlet and outlet side of the cassette must not be removed. Also, it is important that the control filter be exposed to the same time, temperature, and handling conditions as the ones that are used for sampling, *i.e.*, carry the control filter in a shirt or coverall pocket while underground. While the control filter can be carried by any miner assigned to the MMU being sampled, it would be preferable if that miner performed the job of the DO. Finally, the control filter cassette must be kept together with the exposed samples after sampling and treated in the same manner as the exposed filters prior to being transmitted to MSHA. For processing purposes, the dust data card for the control filter must be marked with a large capital "C" for "CONTROL" in the middle of the card and enter a "9" in the "Type of Sample" box. The remaining items on the dust data card must be completed in the same manner as under the previous operator bimonthly sampling program. These procedures are identical to the ones followed by MSHA.

To ensure that the plan parameters are designed to control respirable dust and are suitable to the conditions and mining system at the mine as required under § 75.370(a) of this title, the proposed paragraph (e) prescribes minimum mining activity that must be ongoing during sampling, as well as the operating parameters for use of the engineering controls specified in the plan. Therefore, when sampling under proposed § 70.206, § 70.215 or § 70.220(c), respirable dust samples must be collected on a production shift during which the amount of material produced by the MMU is at least equal to or exceeds the verification production level (VPL) as determined in accordance

with § 70.2. If the VPL is not achieved, the samples for that shift will be voided by MSHA. However, any sample that exceeds either verification limit or the applicable dust standard by any amount would be used to determine the equivalent concentration for that occupation, regardless of production. Also, if the MMU being sampled under proposed § 70.215 is authorized to use PAPRs under special circumstances (see § 70.212) and those circumstances prevent the operator from achieving the VPL, the sample(s) for that shift will be used to determine the equivalent concentration for the affected occupations.

In addition to minimum production activity, limits must also be set on how much the specified engineering control parameters can deviate during sampling from the quantities specified in the ventilation plan. Failure to meet either criterion will undermine miner confidence in the ability of the approved plan parameters to effectively control respirable dust under the conditions at the MMU. Accordingly, paragraph (e) requires each operator to use only the engineering controls and other measures specified in the plan. Recognizing that engineering parameters such as air quantity and velocity and water pressure are subject to measurement error and can vary because they cannot be easily controlled with absolute precision, proposed § 70.201(e) would permit the measured levels to be up to 115 percent of the minimum quantities specified in the plan.

Since miners play an important role in the implementation and maintenance of the approved plan parameters, MSHA recognizes the need for miners to have full confidence in the sampling process used to approve and evaluate the continued adequacy of the plan parameters. Therefore, consistent with the underlying purposes of the Mine Act, proposed paragraph (f) would require the operator to provide affected miners and their representatives with an opportunity to observe any sampling required by this proposed rule. In addition, the operator would be required to give prior notice to miners and their representatives of the dates and times when the operator intends to conduct sampling. If the exposure of individual miners is monitored on a daily basis using a PCDM, the operator would be exempt from this requirement since all affected miners would already be aware that they were being monitored on a continuous basis. To make miner participation more effective, it is important that miners and their representatives are knowledgeable

in those features of the sampling program specified in the proposed rule. This will enable them to make sound and knowledgeable judgements on the conduct of operator sampling under the proposed rule.

While section 103(f) of the Mine Act requires the operator to compensate representatives of miners who accompany MSHA personnel conducting inspections, it would not apply to operator sampling as proposed, unless conducted on the same shift that MSHA chooses to monitor operator sampling. Therefore, unless accompanying MSHA personnel, section 103(f) would not authorize "walkaround pay" for time spent by a representative of miners observing the operator conducting sampling required by this part. MSHA believes that providing the representative of miners with an opportunity to accompany MSHA personnel monitoring operator sampling required by this part with no loss of pay is consistent with section 103(f) of the Mine Act. Under the guidance of the Interpretive Bulletin (43 FR 17546, April 25, 1978), walkaround rights arise when: (1) An "inspection" is made for the purposes set forth in section 103(a), and (2) the inspector is physically present at the mine to observe or monitor safety and health conditions as part of direct safety and health enforcement activity.

MSHA sampling required by this part would be unannounced and conducted to determine if the operator is in full compliance with both the operating conditions and sampling requirements of this part, as well as with all other health and safety standards. Consequently, the representative of miners would have the right to accompany the MSHA personnel with no loss of pay for the time during which the representative exercises this right.

Existing paragraph (c) which requires the operator to submit, when requested by the district manager, the date and time when sampling required by this part will begin would be redesignated as paragraph (g). This requirement enables MSHA to monitor operator sampling on a case-by-case basis to verify compliance with both the operating conditions and sampling requirements of this part.

The requirement that operators take corrective action during the time for abatement fixed in a citation for violation of §§ 70.100 or 70.101 specified in existing paragraph (d) of § 70.201 would be transferred to proposed § 70.218(b)(2). The requirement that the operator sample each production shift until five valid samples are taken under existing