

evidence, that the dust control parameters in effect are no longer suitable to the current conditions at a particular MMU.

Once the dust control parameters for a MMU have been verified as adequate, it would not be necessary to reverify the plan parameters as part of the MSHA six-month review under § 75.370(g), unless the district manager determines these parameters are unsuitable for the current conditions at the MMU. However, the operator may be required to make changes to the parameters based on (1) results of the MSHA six-month review, (2) excessive dust concentrations measured by either MSHA or operator monitoring samples, or (3) a new reduced applicable dust standard which is less than the highest respirable coal mine dust concentration that was previously used to verify the adequacy of the plan parameters. For example, if an operator was cited for exceeding the applicable dust standard when the approved plan parameters were being met or exceeded, the district manager may have cause to question the adequacy of the previously-approved dust control parameters.

Also, depending on sampling results and production records, if the production exceeds the VPL specified in the plan, the district manager may require the operator to verify the plan parameters at the higher production level. For example, suppose the VPL is 10,000 tons and all five concentration measurements taken during MSHA sampling exceed the applicable dust standard on a shift for which the production is 12,000 tons. Then, if the production records indicate that the operator has exceeded the VPL on more than 33 percent of all production shifts during the previous six months, that evidence would demonstrate that the VPL specified in the plan is no longer valid. The district manager would then require the operator to verify the plan parameters under current operating conditions.

Under the proposed rule, the operator would be required to verify the adequacy of the dust control parameters for each MMU within 45 calendar days after obtaining provisional approval from the district manager. This should be ample time for an operator to demonstrate the adequacy of the plan parameters, even when starting up a new MMU, such as a longwall panel. Should an operator experience difficulty in establishing the desired VPL or encounter other unexpected breakdowns or unforeseen circumstances affecting the operational status of a MMU after obtaining provisional approval, the district manager may grant

an operator an extension of up to 30 days to complete verification sampling. Before receiving provisional approval, the operator may be required to modify the plan parameters if the district manager determines that the particular parameters are inadequate or unsuitable for the current conditions in the MMU. If provisional approval is not granted, the operator may not operate the affected MMU.

Under the proposed rule, the adequacy of all previously approved dust control parameters would need to be verified by the operator within 12 months after the final rule becomes effective. Before submitting these plan parameters to the district manager for review and approval to commence verification sampling, proposed paragraph (b) would require the operator to provide additional information. The additional information is described under revised § 75.371(f) of this proposed rule. The operator will be permitted to operate a MMU under the previously approved dust control parameters until the amended plan parameters are either provisionally approved or denied.

To minimize delays in the verification process, MSHA will develop and issue appropriate compliance guides and provide adequate training on the new rule prior to its implementation. MSHA will also be available to provide guidance to individual mine operators once the rule becomes effective. The Agency intends to make every effort to ensure an orderly and efficient transfer from the previous plan approval process to the new process of validating the adequacy of dust control parameters for each MMU prior to implementation.

#### Section 70.206 Verification Sampling; Procedures for Sampling

This proposed section establishes the sampling procedures that each operator would follow when conducting verification sampling. Described are the specific occupations and areas to be monitored in a MMU, and the operation and placement of each sampling device during sampling. The specific operating conditions under which these occupations and areas would be sampled are discussed under § 70.201. These will be covered again for the benefit of the reader.

Proposed paragraph (a) would require the operator to sample specific occupations assigned to a MMU. These occupations were selected because, based on MSHA experience over the past 20 years, miners required to work in those occupations are likely to be exposed to the greatest respirable dust concentration and, consequently, would

be at significant risk of overexposure. Therefore, the operator would be required to sample the environment of: (1) The DO in accordance with proposed paragraphs (d)(1) through (d)(10), which are identical to existing § 70.207(e)(1) through (e)(10); (2) the roof bolter operator(s) (occupation codes—012, 014 or 046); (3) the longwall jack setters (occupation code—041); and (4) any other occupation that the district manager may designate for sampling after reviewing the operator's plan parameters.

Unless otherwise directed by the district manager, when an operator samples a longwall MMU, the DO sample required by this part would be collected by placing the sampling device on the miner who works nearest the return air-side of the longwall working face. Since 1987, this work location has been assigned the 060 occupation code by MSHA for sampling and tracking purposes in accordance with existing § 70.207(e)(7). Therefore, when sampling the 060 DO, the sampling device would remain at all times with the miner working nearest the return air-side of the longwall face. If individual miners rotate out of the DO position during sampling, as is the common practice at some operations, the sampling device must be transferred to and worn by the new miner rotated into the DO position. For example, if all other miners are working upwind of the tailgate-side longwall operator, the miner performing that particular job becomes the DO and wears the sampling device since that individual is working nearest the return air-side of the longwall face. However, if during the shift being sampled another miner, such as the face mechanic, travels past the tailgate-side longwall operator toward the return air-side, the face mechanic would then become the DO and must wear the sampling device for the period of time that individual works nearest the return air-side of the longwall face. When the face mechanic returns upwind of the longwall operator, the sampling device must then be transferred back to the longwall operator, as that individual will now be the miner working nearest the return air-side.

This is compatible to sampling any other DO, whether it is the 036 DO (continuous miner operator) or the 044 DO (tailgate-side longwall operator). The sampling device must remain at all times in the environment of the DO and not with the individual miner, regardless of how many miners work in that location during the shift. Sampling the DO in this manner preserves the long-standing high-risk occupation