

would be required to stop verification sampling, provide approved respiratory equipment, identify the cause of the high dust concentration, and take corrective action to prevent miners from being overexposed on subsequent shifts.

When the operator receives notification from MSHA that a verification sample exceeded either verification limit, the operator must stop sampling and immediately make approved respiratory equipment available to affected miners in accordance with § 70.300. The use of respiratory equipment should be encouraged until the operator determines the cause of the overexposure and takes corrective measures. If deficiencies are identified in the operator's dust control program, appropriate corrections must be made under proposed paragraph (b) to lower dust concentrations in the work environment of the affected occupation or location to a level no greater than the applicable verification limits.

MSHA recognizes that, given the rigorous nature of the verification test conditions, such as requiring higher production levels to be maintained and the application of stringent approval criteria, some failures will occur. If some attempts prove to be less than successful, it would not necessarily be due to the lack of good faith effort on the part of the operator, but could be due to the inability to predict accurately the effectiveness of particular dust control parameters under the proposed test conditions. For example, assume the VPL proposed is significantly higher than that which has been recorded during previous sampling inspections. In this instance, it would be difficult to predict in advance that the proposed dust control parameters would be effective unless the VPL was more representative of the previous production levels. Therefore, MSHA is proposing not to cite the operator when samples exceed the verification limits. However, an operator would be cited under proposed paragraph (b) of this section for failure to take action required to address the cause of the excessive dust levels once notified of the results of verification sampling. This is consistent with the Dust Advisory Committee's recommendation that:

MSHA should not issue citations for violation of the applicable dust standard based on operator verification sampling. Operator inaction to protect miners where dust values are in excess of the PEL should be citable by MSHA."

The operator would also be required under proposed paragraph (c) to document the corrective actions taken

and submit this information to the district manager within five days of receiving MSHA notification that one or both of the verification limits were exceeded. The documentation must describe the specific corrective measures taken and the manner that these measures would be used to prevent overexposures on subsequent shifts, including the proposed changes in dust control parameters. The operator would be encouraged to seek technical assistance from the district manager to help in determining what additional measures are reasonably likely to help in meeting the verification limits.

The district manager would notify the operator and the representative of miners if the proposed revisions to the plan are provisionally approved and whether the operator should either resume or initiate verification sampling in accordance with § 70.206. The district manager may require the operator to make additional changes to the plan parameters based on the results of verification sampling before the operator begins the verification sampling process over again. If no additional changes are required by the district manager, the operator would be instructed to resume the verification process by continuing the sampling from the point at which it was stopped.

The district manager would determine whether the operator should either resume verification sampling or start plan verification anew on a case-by-case basis. MSHA would not necessarily require the operator to revise the plan parameters nor require the verification process to start over again because a valid sample exceeded the verification limit by a small amount, such as 0.05 mg/m³, unless the district manager no longer felt confident in the ability of the plan parameters to effectively control respirable dust under the proposed operating conditions. The decision to resume sampling to verify the adequacy of the current plan parameters or start over again with totally revised plan parameters would be based on the information the operator provides regarding the cause of any excessive dust concentration measurements and the steps taken to prevent similar occurrences in the future. For example, suppose the concentration measurements are excessive due to a deviation in the operator's established operating procedures. It should be possible for the operator to prevent this from occurring in the future without requiring changes in the dust control parameters. If the district manager finds this to be the case, and concurs with the operator's proposed action to prevent similar occurrences, the operator would

be directed to resume verification sampling. However, if the plan parameters are found to be inadequate for the proposed operating conditions and the operator was notified to upgrade the parameters, the operator would be instructed to start the verification process over again.

Section 70.209 Use of Supplementary Control Measures; Types and Conditions for Use; Request for Approval

This proposed section would require the operator to take certain actions when verification samples exceed either verification limit after the operator implemented all feasible engineering or environmental controls. It would permit an operator to use approved powered air-purifying respirators (PAPRs), administrative controls, or a combination of both, after MSHA has determined that further reduction of dust levels cannot be reasonably achieved using accepted engineering controls. The decision-making process for determining whether feasible engineering controls should be augmented by supplementary controls (personal protective equipment and/or work practice controls) to maintain the personal work environment of the affected miners at a safe exposure level will consider the various factors involved in each specific situation. Some of the factors to be taken into account include: (1) The severity and magnitude of the exposure; (2) number of affected miners, their job location and assignment; (3) types and location of dust-generation sources; (4) range of effectiveness and reliability of the implemented engineering controls; (5) availability, suitability, reliability, and cost of other feasible engineering controls; (6) operational conditions such as the method of mining, mining height, etc.; (7) compliance history; (8) effectiveness and reliability of supplementary control measures; (9) concerns of individual miners and their representatives; and (10) ability to measure and ensure the adequacy of exposure control.

Section 202(h) of the Mine Act does not prohibit the use of PAPRs and administrative controls under the specific circumstances set forth in the proposed rule. These measures would be used only as supplementary controls and not as a substitute or replacement for engineering control measures in the active workings. The use of these supplementary control measures under the conditions of use set forth in the proposed rule will enhance the level of health protection for miners by preventing overexposures on all shifts.