

The combination of engineering and supplementary controls will provide reliable and effective exposure control when used in accordance with the approved plan provisions.

Consistent with the Mine Act and the Dust Advisory Committee's recommendation, engineering controls continue to be recognized as the primary means to control exposure to respirable dust under this proposed rule. Therefore, if verification samples for a MMU continue to exceed either verification limit after implementing all feasible engineering controls, including such measures as required by the district manager, the operator must continue to use these control measures to reduce the concentration of respirable dust as low as possible.

MSHA believes that it is feasible to control respirable dust to an acceptable level as required by § 75.370(a)(1) at most non-longwall operations using available engineering controls. Currently, over 90 percent of the approximately 720 continuous miner operations employ extended cut techniques and, therefore, are being operated remotely. As a result, the continuous miner operator, the occupation normally identified as the DO, is no longer required to work near the face area where material is being extracted and respirable dust generated. Likewise, roof bolting machines, a major generator of respirable quartz dust on continuous miner MMUs, are now required to be equipped with suitable drill dust controls. Under § 72.630 of this title, drill dust must be controlled by either permissible dust collectors, by water, water with a wetting agent, by ventilation, or by any other method approved by MSHA. However, the Agency also recognizes that some non-longwall MMUs continue to have difficulty maintaining consistent compliance with reduced standards even at production levels that are significantly lower than the proposed VPL because of the high quartz content of the adjacent roof rock, which is drilled to install roof bolts, or of the coal seam being mined.

With regard to mining operations employing the longwall mining method, MSHA recognizes that technological advances have boosted longwall production to record levels. According to MSHA data, the average production reported by operators during bimonthly sampling of longwall MMUs has increased over 6 fold between 1980 and 2002, from 890 to 5500 tons/shift. Unfortunately, as discussed in section III.D. of the preamble, dust control technology has not kept pace, rendering available, acceptable controls less

effective, which increases the miner's risk of being overexposed on any given shift. Given the state of longwall dust control technology, the engineering controls currently available may not be effective in achieving and maintaining continuous compliance at certain locations along the longwall face such as downwind of the longwall operator (occupation code—044) at some high-production longwall MMUs. If the operator believes that all feasible engineering controls have been installed, maintained, and operated as specified in the ventilation plan, the operator may submit a written request to MSHA's Administrator for Coal Mine Safety and Health, asking for authorization to augment the implemented engineering controls with supplementary controls to maintain the personal work environment of the affected miners at a safe exposure level and to achieve compliance with the verification limits and §§ 70.100 and 70.101. If such a request is made, a copy must be provided to the representative of miners and posted on the mine bulletin board in accordance with proposed § 70.217(b)(3) at the time it is submitted to MSHA.

When the Administrator receives such a request, guidance would be immediately solicited from a panel of experts specifically established to address such matters. Members of this panel would have extensive knowledge in respirable dust control and would represent the following organizations within MSHA: Technical Support, Division of Health, the MSHA District having jurisdiction over the mine making the request, and another MSHA District. In some cases, MSHA may solicit advice from NIOSH, an Agency with significant experience in dust control. As part of their deliberations and on a case-by-case basis, the expert panel may visit the mine to observe various controls in operation. This panel will also consider all comments MSHA receives from the representative of miners, as well as individual miners, and provide copies of these comments to the operator upon request. Any recommendations reached by this panel would be based on the (1) review of all the facts gathered, (2) consideration of the various factors involved in each specific situation as outlined above, (3) their combined practical and technical experience in dust control, and (4) sound engineering judgement.

Recognizing the urgency of such a request, the Administrator would either approve or deny the operator's request within 30 calendar days or as soon as practical after receiving the request. If approval is denied, the operator will be

notified in writing of the specific reasons for disapproval. If approval is granted, the operator would be permitted to use either PAPRs approved by NIOSH under 42 CFR 84 and by MSHA under part 18 of this title, administrative controls, or a combination of both, as supplementary controls to protect those miners assigned to occupations that continue to exceed either verification limit, provided the operator meets the conditions specified in §§ 70.210 and 70.211 or §§ 70.213 and 70.214 of this part.

If the affected occupation involves the 060 occupation, the operator would also be informed that the DO would be changed from the 060 to the 044 occupation, or another occupation designated by the district manager depending on how the particular longwall MMU is ventilated. While it may be difficult to lower the dust levels to the applicable dust standard in the environment of some miners working on the longwall face under certain operating conditions, MSHA believes that, using available engineering controls, an acceptable work environment can be provided for the tailgate-side longwall operator (Occupation code—044) and other miners on a continuing basis. Therefore, unless demonstrated otherwise through verification sampling, the operator would be required to maintain the environment of the new 044 DO at or below the verification limits or below the applicable dust standard using engineering controls. This should have a significant effect on the quality of the mine atmosphere downwind of the 044 DO where miners, wearing PAPRs or under administrative controls, are required to work.

Under the proposed rule, the operator would be permitted to continue to use supplementary controls to reduce dust exposure of individual miners assigned to specific occupations until such time when other feasible engineering controls become available and are implemented or until the district manager revokes the operator's approval to use supplementary controls for failure to comply with the requirements of proposed § 70.211(b) or § 70.214(b).

As discussed above, MSHA will continue to require that all feasible engineering controls be installed. While the proposed rule provides for expanded use of supplementary controls, such control measures should only be used as an interim method of protection since their effectiveness remains secondary to that of engineering controls.