

PAPRs as a supplementary control. To continue to use PAPRs and operate under the same conditions that were in effect during verification sampling, the operator would be required to comply with the approved revised plan parameters on each production shift, in particular, the provisions of the PAPR protection plan. MSHA believes that the effectiveness of a PAPR is dependent upon proper training and continued maintenance, which are critical elements of an acceptable PAPR protection program. Necessary maintenance includes examining the PAPR for defects prior to use, charging the batteries properly, and appropriate replacement of parts including, but not limited to, the filter elements, visors, batteries, blowers, and face seals.

In addition, the operator would be required to ensure that no occupation where PAPRs must be worn by the miners required to work in those particular job positions, the DO and other occupations in the affected MMU, are exposed to an equivalent concentration of respirable coal mine dust that exceeds the applicable dust standard.

Finally, since the use of PAPRs as a supplementary control is not intended to be permanent and their use is being permitted until feasible engineering controls become available, proposed paragraph (b)(3) would require the operator to continue to seek and implement additional improvements when they become available. To ensure conformance with these requirements, MSHA will review the operator's approved plan parameters, including the operator's compliance history, every 6 months to determine if the operator is using all feasible engineering controls and if the plan parameters continue to be suitable to the current operating conditions. If MSHA determines that other acceptable controls have become available which would be suitable to the particular MMU, MSHA would notify the operator and the representative of miners of its findings.

MSHA approval to use PAPRs as a supplementary control may be revoked if the operator failed to meet the requirements of proposed paragraphs (b)(1), (2) and (3) of this section. If the operator's plan provisions are revoked, the operator would be required to submit a revision to the plan parameters for the affected MMU that would include a VPL at which compliance with the applicable dust standard would be achieved.

Section 70.212 Powered Air-Purifying Respirators (PAPRs); Conditions for Use under Special Circumstances

Section 70.212 sets forth the special circumstances under which an operator would be permitted to use, on an intermittent basis, PAPRs to protect individual miners from excessive dust concentrations and for compliance purposes. Such use is only permitted after the plan parameters have been verified without the use of supplementary controls and additional remedial actions will not be practical or feasible because of the intermittent nature and duration of a special condition.

Because of the dynamic nature of mining, it is not uncommon for a MMU to occasionally encounter operating conditions which directly impact the ability of the previously verified plan parameters to effectively control respirable dust. This is especially true when the particular condition encountered varies from the operating conditions under which the adequacy of the plan parameters was originally demonstrated. It is not because an operator may have failed to adequately take such conditions into account when designing the plan parameters, but because the proposed verification process requires the adequacy of the plan parameters to be demonstrated only under typical operating conditions. For example, encountering a significant rock band in the coal seam containing a high percentage of quartz would be considered a unusual circumstance since its occurrence is not routine. While this may have occurred in the past and may occur again, the operator cannot predict with certainty when this condition might reoccur. Because of the unpredictable nature of such an occurrence, it may not be practical to factor this into the design of the plan parameters.

While the Mine Act and implementing regulations intend for the working environment to be free of excessive dust at all times, MSHA recognizes that it may not be practical or feasible to implement additional engineering controls whenever these unusual conditions occur, especially when they occur intermittently for a brief period of time. Even if the operator makes a concerted effort to implement additional engineering controls, it may require an extended period of time to complete and verify the effectiveness of the adjustments, during which time some miners may not be adequately protected from excessive dust.

Before MSHA will grant authorization to use PAPRs for compliance purposes,

the operator must show that the particular condition or situation is atypical, occurs only occasionally, and is beyond the control of the operator. Increased production levels which exceed the VPL and any other situations which are more routine and therefore under the operator's control would not be characterized as unusual conditions. However, because of the difficulty in maintaining proper ventilation along a longwall face, during start-up, MSHA will consider and encourage the use of PAPRs at longwall MMUs until the first gob fall. The types of evidence MSHA would consider when the unusual condition encountered involves cutting rock occasionally, would include information on quartz levels, the duration and frequency of reduced standards, and/or on the reject rate for a particular MMU.

MSHA anticipates questions regarding what constitutes special circumstances under this proposed section. It is not possible or appropriate to set forth all circumstances which might be covered by this proposed rule. Each request will be considered by the district manager on a case-by-case basis. The district manager will rely on past in-mine experience and the information provided by the operator in determining whether the special circumstances under which the applicant is seeking authority to use PAPRs, occurs intermittently and is the best way to protect the affected miners during such periods. The Agency specifically solicits comments on these issues, especially, with regard to what other special circumstances in mining may necessitate the immediate use of PAPRs.

Under proposed paragraph (a), an operator can file a written request seeking MSHA approval to use PAPRs under special circumstances: (1) When submitting a ventilation plan under § 75.370 of this title, (2) when required to verify a previously approved ventilation plan that was revised in accordance with § 75.370(f), or (3) after the district manager approves the plan parameters based on the results of operator verification samples. To the extent possible, the operator must submit a written request prior to encountering special circumstances to assure prompt review, and revision to the ventilation plan. A copy of the request must be provided to the representative of miners at the time of submittal and posted on the mine bulletin board to alert the miners working in the affected MMU. The district manager will consider all comments and, if requested, provide copies of these comments to the operator.