

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 the district manager determines that other controls have become available which would be suitable to the particular MMU, the district manager would notify the operator and the representative of miners of such findings.

MSHA approval to use administrative controls as a supplementary control may be revoked if the operator fails 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 70.215 Quarterly Evaluation of Approved Plan Parameters

Because conditions in an underground mine are constantly changing, the effectiveness of previously approved dust control parameters for a particular MMU may change. Consequently, plan parameters may later be inadequate in preventing overexposures on individual shifts and adjustments may be necessary to continually comply with the applicable dust standard. Therefore, in addition to ensuring compliance with the plan parameters under existing § 75.362(a)(2), the operator also has the responsibility to ensure that the plan parameters continue to be effective in controlling respirable dust as required by § 75.370(a), and to upgrade the plan parameters when deemed appropriate. This is necessary to prevent overexposures on individual shifts and, in the long run, the occurrence of coal workers' pneumoconiosis and silicosis in miners.

The importance of assessing the continued adequacy of plan parameters and the role of operators in that process was recognized by the Dust Advisory Committee:

MSHA should develop specific performance requirements for operator sampling relative to documentation of continued adequacy of the plan parameters. (MSHA, 1996)

To accomplish this, proposed § 70.215, would require an operator to implement a 3-month interval (quarterly) sampling program at MMUs where the continued

adequacy of the approved plan parameters is in question and miners are at risk of being overexposed as indicated by MSHA-collected respirable dust samples used to audit operator compliance with applicable standards. Therefore, rather than require all operators to sample quarterly, the quarterly monitoring requirement is triggered when airborne dust concentrations, as measured under MSHA's sampling program, exceed the applicable dust standard. This risk-based approach is more performance-oriented and minimizes unnecessary sampling. The purpose of operator quarterly sampling would be to monitor the adequacy and suitability of the approved dust control parameters under prevailing conditions.

Since operators have the responsibility for providing a workplace that is free of excessive dust, all operators are encouraged to design and implement a monitoring program suitable to their specific mine to ensure that the applicable dust standard is not exceeded. MSHA believes that operators have a number of incentives to monitor the quality of the air in each MMU on a regular basis to ensure they can (1) assess the effectiveness of their dust control parameters or need for adjustments to continually comply with the applicable dust standard and (2) avoid citations and penalties during MSHA sampling inspections.

Under the proposed rule, the sampling process would begin with the determination by the district manager of the particular MMUs which would be regularly sampled at the mine. In determining which MMUs at a mine should be sampled periodically, the district manager would, under the proposed rule, first review the results of respirable dust samples after each sampling inspection of a MMU. If a valid equivalent concentration measurement for any occupation exceeds the applicable dust standard by at least 0.1 mg/m³, quarterly sampling would be required.

The proposal also provides for the suspension of quarterly sampling when all respirable dust samples submitted by the operator in accordance with this section, together with samples taken by MSHA during at least four consecutive quarters, demonstrated continuing compliance with the applicable dust standard. To ensure that the proper MMUs are exempted from quarterly sampling when miners are no longer at risk of being overexposed, each operator- and MSHA-collected sample must be at or below the applicable dust standard.

Under paragraph (a), the operator would begin quarterly sampling during the next full 3-month period following MSHA notification of the designation of a MMU for sampling. The proposed rule provides a schedule for quarterly sampling. For example, during the period January 1 through March 31, operators would be required to sample each designated MMU in producing status. When there is a change in the operational status of the particular MMU that affects operator monitoring, proposed § 70.219(a) requires the operator to report such status change to the district manager. Suppose, for example, a MMU has been in nonproducing status for 75 calendar days during the current quarterly sampling period, the operator would still be expected to satisfy the sampling requirements because there would be sufficient time remaining in the current period to sample the required one shift. Failure to submit the required number of valid respirable dust samples within a given quarterly period would constitute a violation of this provision. Operators would be encouraged to conduct the required sampling at the beginning of each quarterly sampling period. All samples submitted by the operator would be processed by MSHA.

To provide consistency and uniformity among operator-collected samples for purposes of monitoring plan effectiveness, the proposed monitoring program would require the operator to sample selected occupations in accordance with proposed § 70.206(b), (d) and (e) for one shift. Also, since the objective of quarterly sampling is to evaluate the continued adequacy of the approved plan parameters under the prevailing conditions, each sample must be collected under the operating conditions specified in proposed § 70.201(e) which specifies that the amount of material produced must equal or exceed the VPL, unless sampling in accordance with proposed § 70.220(d). Only the dust control parameters listed in the approved ventilation plan, at levels not exceeding 115 percent of the specified quantities, are to be in place during sampling. As in verification sampling, if the operator fails to attain the VPL on the shift sampled, all samples for that shift will be voided by MSHA. However, if any sample, regardless of production, is found to exceed the applicable dust standard by any amount, it would be used by MSHA to determine the equivalent concentration for that occupation. Also, if the MMU being sampled is authorized to use PAPRs under special circumstances (proposed