

§ 70.212) and those circumstances prevent the MMU from achieving the VPL, all samples for that shift would be used to determine the equivalent concentration for the affected occupations.

Since these samples are for evaluation purposes, the operator would not be required to use a control filter in accordance with proposed § 70.201(d). The district manager may require the operator to reverify the adequacy of the plan parameters for a particular MMU based on these results and other compliance data if the data indicates that the parameters are no longer effective in maintaining compliance. If, on the other hand, the operator or MSHA is prevented from confirming the suitability of the approved dust control parameters to the current operating conditions because of repeated submission of invalid samples, reverification of the plan parameters would be required by the district manager.

Under proposed paragraph (c), when a valid equivalent concentration measurement exceeds the applicable dust standard by at least  $0.1 \text{ mg/m}^3$ , the operator must make approved respirators available to the affected miners in accordance with § 70.300, unless the occupations are under a PAPR protection program. The operator must determine the cause and correct the identified deficiency to reduce the concentration of respirable dust to within the applicable dust standard and avoid future overexposures. This requires the operator to review the dust control parameters and to determine what factors may have contributed to the overexposures. As discussed elsewhere in the preamble, if the sampled occupation is under an approved PAPR program, each valid concentration measurement would be adjusted in accordance with § 70.2. The equivalent concentration would be compared to the applicable dust standard. For example, assume the reported equivalent concentration of a sample is  $2.56 \text{ mg/m}^3$  and the MMU is assigned a protection factor of 4. Then the equivalent concentration measurement, adjusted for the use of a PAPR, is  $0.64 \text{ mg/m}^3$  [ $2.56 \text{ mg/m}^3 / 4 = 0.64 \text{ mg/m}^3$ ].

Additionally, since the presence of excessive dust poses a significant health hazard to miners, proposed paragraph (c)(3) would require excessive dust conditions to be recorded in the same manner, but with some exceptions, as the hazards recorded under § 75.363(b) of this title. The record would include: (1) The date the sample was taken; (2) the location in mine and the occupation

where the excessive dust condition occurred; (3) the equivalent concentration measurement of each sample collected; (4) the specific action taken to reduce the concentration of respirable dust to within the applicable dust standard. MSHA will be providing the operator with a respirable dust sample data report that contains much of the same information required under this paragraph. In order to reduce the operator's paperwork burden, the MSHA respirable dust sample data report could serve as this record, provided the operator includes the specific corrective action taken, certifies its accuracy and completeness, and retains the record for at least 12 months at a surface location as required by § 75.363(c) and (d). The dust record does not need to be countersigned, provided that the mine official certifying the record is aware of the monitoring results and directed or supervised the implementation of the corrective actions. These records provide notice to mine management that excessive dust conditions are recurring, the locations in the mine, and the effectiveness of the various corrective actions. For example, if an excessive dust condition occurs repeatedly and the same corrective action is taken, the corrective action may not be effective. Posting the record on the mine bulletin board will alert all affected miners of the particular dust hazards to which they have been exposed and the specific corrective action(s) being taken by the operator to reduce the dust concentration in the work environment to within the applicable dust standard to prevent similar occurrences in the future. The requirement to inform miners is necessary to assure miners that the operator is making efforts to provide a safe and healthful work environment. This is a new requirement and the Agency solicits comments on the proposed approach to require that excessive dust conditions and the corrective action taken be recorded, certified and retained as currently required for other hazards under § 75.363.

If the results of quarterly sampling indicate that the approved plan parameters are no longer adequate to control respirable dust under the prevailing operating conditions, the operator must revise the plan parameters and submit the proposed revision to the district manager for review and approval. For example, if any valid equivalent concentration measurement meets or exceeds the citation threshold value (CTV) listed in Table 70-2 that corresponds to the

applicable dust standard in effect, the plan parameters would need to be upgraded and verified under current conditions. Because the results indicate that miners are being overexposed, MSHA will conduct follow-up sampling whenever an operator's quarterly sample meets or exceeds the CTV and the plan parameters are not revised by the operator.

Under proposed paragraph (e), the results of operator quarterly sampling will not be used to determine compliance with the applicable dust standard. If any sample result exceeds the CTV, the operator would not be cited for a violation as would be the case if MSHA sampled. The operator would, however, be required to take corrective action. Failure to take such action to reduce the respirable dust concentration within the applicable dust standard would be citable under this section.

MSHA requests comments on the appropriateness of the criteria used to trigger operator monitoring of plan effectiveness and proposed frequency, especially with regard to the 3-month interval, that maximize the protection of miners' health. Also, whether a more performance-oriented requirement should be imposed on operators, requiring them to monitor at the frequency needed to assure, with reasonable accuracy, the continued adequacy of the approved plan parameters in preventing overexposures on individual shifts.

#### Section 70.216 Respirable Dust Samples; Transmission by Operator

MSHA is proposing no substantive changes to existing § 70.210, except for removing reference to § 70.202 (Certified person; sampling) from existing paragraph (c) to eliminate repetition since revised § 70.201 specifies that all sampling required under this part must be conducted by a certified person, and redesignating it as § 70.216. Existing paragraph § 70.210(e) would be removed since all samples submitted by the operator under this part would be processed by MSHA. The proposed rule, like the existing rule, requires all respirable dust samples collected in accordance with this part to be transmitted to MSHA within 24 hours after the end of the sampling shift in containers provided by the manufacturer of the filter cassette. The need to verify the adequacy of the dust control parameters for a particular MMU in the shortest possible time requires that samples be promptly transmitted to MSHA for analysis.

Each sample transmitted by the operator must be accompanied by a