

provisions. Finally, because verification and subsequent quarterly monitoring of the adequacy of plan parameters is conditioned on the VPL, these records are necessary to determine if the VPL used in approving the operator's dust control parameters for a particular MMU continues to reflect typical production levels at the MMU.

The proposed rule would permit production records for each MMU to be maintained in any form utilized by the operator to measure the total amount of material produced, provided the method is the same as that used to establish the VPL under proposed § 75.371(f). For example: number of loaded shuttle cars, feet of advance, raw tonnage, or number of longwall passes would each be an acceptable method of recording production—provided the same method was consistently used.

#### Section 75.371 Mine Ventilation Plan; Contents

The proposed rule would revise paragraphs (f) and (t). Existing paragraph (f) would be revised to require the dust control provisions of the ventilation plan to include any specific work practices used to minimize the dust exposure of individual miners assigned to specific occupations, information on the location of the roof bolter(s) during the mining cycle for each continuous miner section, and the cut sequence for each longwall mining section. Also, the dust control provisions of every ventilation plan would be required to include the length of each normal production shift and the verification production level (VPL) as determined in accordance with revised § 70.2. This information would enable MSHA to more effectively assess the suitability of the operators's proposed plan parameters before determining whether or not to grant provisional approval. For example, the dust control parameters may be less protective if verified over an 8-hr shift when the length of the production shift is 9 hours. Also, since MSHA recognizes the critical role of miners in the implementation of the plan parameters at each MMU, this is intended to provide more information to miners concerning the specific conditions under which the adequacy of the plan parameters for each MMU was demonstrated. With this information, the miner will be able to bring problems to the attention of mine management or to request an inspection by MSHA under § 103(g) of the Act if operating conditions no longer reflect those in effect during verification sampling and there is concern about the dust conditions at a particular MMU.

Although a VPL and shift length for each MMU would be included in the ventilation plan, the operator would not be cited if the total amount of material produced or the length of the actual production shift is not as specified in the plan. MSHA considers these to be plan design criteria, not minimum plan parameters that must be in effect on every shift. MSHA would expect production on a MMU to exceed the VPL on about 33 percent of all production shifts. If the district manager determines that an operator's actual production exceeds the VPL on more than 33 percent of the production shifts over a six-month period, or the shift length no longer reflects the conditions under which the approved plan parameters were originally verified, and operator or MSHA samples exceed the applicable dust standard, the district manager may require that the adequacy of the plan parameters be verified under different operating conditions of production or shift length.

Since MSHA is proposing to revoke existing §§ 70.207 and 70.208, which require bimonthly sampling by mine operators, existing paragraph (t) would be revised to remove the provision that mine operators identify in the ventilation plan the locations where samples for designated areas (DA) would be collected, including the specific location of each sampling requirement, and the reference to § 70.208. However, to ensure that the mine atmosphere where miners normally work or travel is continuously maintained in compliance, proposed paragraph (t) would continue to require mine operators to identify in the mine ventilation plan the location of each DA, defined in revised § 70.2, and the particular dust control measures that would be used at the dust generating sources for these locations. These locations would continue to be sampled by MSHA personnel as discussed earlier (see Background Section) to monitor operator compliance with the applicable dust standard and to assess the adequacy of the operator's dust control measures at these locations.

#### C. Part 90

To maintain consistency with the proposed revisions to part 70, subpart A of this proposed rule also contains new definitions of identical terms. Included are definitions of new terms such as "approved sampling device," "citation threshold value," "equivalent concentration," "MRE," and "quartz."

Subpart B of the proposed rule would be revised by changing the procedures for determining the average quartz percentage used to calculate the

applicable dust standard. These are identical to the procedures proposed under § 70.101. The proposed rule also clarifies the application of specific transfer and pay-protection provisions under special circumstances that reflect long-standing MSHA policy in effect since the rule became effective on December 5, 1980.

The proposed rule substantially revises the existing operator sampling requirements under Subpart C of part 90. Consistent with the proposed amendment to part 70, the proposed rule would revoke existing provisions concerning operator bimonthly and abatement sampling of part 90 miners. Consequently, §§ 90.201(d) and 90.208 would be removed. While MSHA would be assuming responsibility for all enforcement-based monitoring of part 90 miners in underground coal mines, operators would continue to play a vital role in assessing the quality of the mine atmosphere in positions to which new or transferred miners are assigned to work.

As under existing § 90.207, which has been revised and redesignated as § 90.204, the operator employing part 90 miners would be required to collect five valid samples within a prescribed time period for purposes of verifying the suitability of a new or transferred part 90 miner's assigned work position. To ensure that the part 90 miner is not personally overexposed, the duration of sampling would no longer be limited to 480 minutes, but would be carried out over the miner's entire work shift, regardless of the number of hours worked.

Another significant change is how the results of operator-submitted samples would be analyzed by MSHA and the type of action required based on those results. MSHA would abandon its long-standing practice of relying on averaged results to make compliance decisions. Because averaging can obscure specific instances of overexposures by diluting sample results taken over multiple shifts, each valid sample would be compared with the applicable dust standard. Therefore, to be confident that a part 90 miner is placed in an atmosphere which actually meets the applicable dust standard, all five valid samples must be at or below the standard. If the result of any sample exceeds the standard by at least 0.1 mg/m<sup>3</sup>, the operator would be required to take corrective action and take an additional five valid samples for the affected part 90 miner.

Since the primary purpose for taking these samples is to assess the suitability of the part 90 miner's working environment, these samples would not