

be used by MSHA to cite the operator for noncompliance with the applicable dust standard. As discussed below, only MSHA-collected samples would be used for that purpose. However, an operator would be cited for failure to take appropriate corrective action to place the affected part 90 miner in an atmosphere that meets the applicable dust standard within the specified time period.

Since MSHA would assume responsibility for compliance and abatement sampling, the proposed rule sets forth new procedures for determining noncompliance with the applicable dust standard; the specific actions that an operator would be required to take within the time for abatement fixed in a citation; and the conditions under which MSHA would terminate a citation for a violation of the standard. Under the proposed rule, citations for violations of §§ 90.100 or 90.101 would be issued only when a valid single-shift sample demonstrates noncompliance with at least 95-percent confidence. MSHA would consider a violation for excessive dust to be abated and terminate the citation when the result of a valid single-shift sample is at or below the applicable dust standard.

Although existing subpart D has been revised to reflect MSHA sampling of part 90 miners, the specific requirements are essentially the same. It now states that when approving an operator's dust control plan, the district manager would consider the results of MSHA sampling for compliance or abatement purposes. It also indicates that MSHA would, through compliance and abatement sampling, monitor the continued effectiveness of the operator's dust control measures. Finally, throughout Part 90, "shall" has been replaced by "must."

For ease of review, MSHA is republishing the entire regulatory text of subparts A, B, C and D of Part 90 as it will appear in the Code of Federal Regulations.

Sections 90.1 through 90.3

Scope, Definitions, and Part 90 Option

Section 90.1 Scope

This section would remain unchanged.

Section 90.2 Definitions

The proposed rule includes definitions virtually identical to corresponding definitions in proposed Part 70 for terms such as "approved sampling device," "citation threshold value," "equivalent concentration," and "MRE." Accordingly, as in Part 70, some existing definitions of terms such

as "certified person," "concentration," "mechanized mining unit," and "respirable dust" have been modified either to more clearly convey the intended meaning under the proposed rule, to reflect the conventional definition or to be consistent with the definition of identical terms in proposed Part 70 of this title. Most of the other definitions remain unchanged under the proposed rule. No discussion is included below if a definition would not change under the proposed rule.

Approved Sampling Device

"Approved sampling device" would mean a sampling device approved by the Secretary and the Secretary of Health and Human Services under part 74 (Coal Mine Dust Personal Sampler Units) of this title; or approved by the Secretary when it has been demonstrated that a respirable dust concentration measurement can be converted to a concentration measurement equivalent to that obtained with an approved sampling device. Under the proposed rule, respirable dust sampling for Part 90 miners would continue to be collected using sampling devices approved by NIOSH pursuant to existing 30 CFR part 74. Also, to accommodate the adoption of advanced sampling technology in the future such as continuous respirable dust monitors, the proposed rule would permit the Secretary to approve and use any technologically advanced sampling devices that should become available in the future but could not be approved under the regulatory requirements of 30 CFR part 74.

Therefore, under the proposed rule, any newly developed sampling instrument would be considered an approved device pursuant to this definition when the Secretary demonstrates that the respirable dust concentration measured by the new instrument can be converted to a concentration measurement equivalent to that obtained by a device approved under 30 CFR part 74 of this title.

Certified Person

The existing definition would be modified by removing references to existing §§ 90.202 and 90.203. The provision requiring the use of a certified person to conduct sampling as required by this part is being transferred to revised § 90.201. Existing § 90.203 which requires approved sampling devices to be maintained and calibrated by a certified person would be retained and redesignated as § 90.202.

Citation Threshold Value (CTV)

"Citation threshold value" would mean the lowest acceptable equivalent dust concentration measurement demonstrating that the applicable dust standard has been exceeded at a high level of confidence and at which MSHA would cite an operator for a violation of §§ 90.100 or 90.101 under proposed § 90.207. Since MSHA would be assuming responsibility for compliance sampling under the proposed rule or sampling currently being carried out by operators under existing § 90.208(a), a determination of noncompliance would be based solely on the results of single shift samples collected by MSHA in accordance with proposed § 72.500 of this title. Appendix C explains how each critical value listed in proposed Table 70.2 was derived. Each CTV is calculated to ensure that citations will be issued only when a single-shift measurement demonstrates noncompliance with at least 95 percent confidence.

Concentration

The existing definition would be modified by replacing the term "substance" with "respirable dust" to more clearly convey the meaning under the proposed rule.

Equivalent Concentration

"Equivalent concentration" would mean the concentration of respirable dust, as measured by an approved sampling device, converted to an 8-hour equivalent concentration as measured by a Mining Research Establishment (MRE) sampler. This conversion is accomplished in two steps. First, the concentration measurement is multiplied by a constant factor prescribed by the Secretary specifically for the approved sampling device. The result is then multiplied by $t/480$, where t is the sampling time in minutes if longer than eight hours, to make it equivalent in dosage to the concentration as measured by an MRE sampler on an 8-hour work shift. Since sampling will be conducted over the course of the Part 90 miner's entire work shift, which includes travel to and from the assigned work position, t will also be equal to the length of the entire work shift of the miner being sampled. If the length of the Part 90 miner's work shift is eight hours or less, then t must equal 480 minutes.

The current U.S. coal mine applicable dust standard is based on epidemiologic studies of British coal miners. In these studies, miners routinely worked 8-hour shifts, and their respirable dust exposures were assessed based on 8-