

These standards require approved sampling devices to be calibrated at a flowrate of 2.0 liters of air per minute. They also establish the flowrate and testing and examination requirements for approved sampling devices. Careful examination and testing of sampling devices would continue to be required immediately prior to the start of a shift during which samples would be collected for purposes of this proposed rule. This would include testing the battery voltage and examining all external components of the sampling devices to be used. Any necessary external maintenance to assure the sampling devices are clean and in proper working condition should be performed at this time by a certified person. Temporary certification of persons provided under existing § 90.203(c) would not be retained under the proposal.

#### Section 90.203 Approved Sampling Devices; Operation; Air Flowrate

Proposed §§ 90.203(a) through (c) retains the operation and flowrate requirements for approved sampling devices in existing §§ 90.205(a) through (d), with minor changes. Since MSHA has defined an approved sampling device in revised § 90.2 to mean a device approved in accordance with part 74 of this title, proposed paragraph (a) excludes reference to part 74. Similarly, for purposes of simplification, reference to § 90.202 (Certified person; sampling) would be removed and, wherever used, it would be replaced by certified person as defined in revised § 90.2.

MSHA believes that the two on-shift examinations of sampling devices under proposed paragraphs (b)(1) and (b)(2), which are identical to the examinations required under existing § 90.205(b) and (c), continue to be an important part of a reasonable and prudent sampling program. The first examination would be made by a certified person during the second hour after the sampling devices are placed in operation. This examination would assure that each sampling device is operating properly and at the proper flowrate. If the proper flowrate is not maintained, necessary adjustments in the flowrate would be made at this time by the person certified to collect samples. The second examination would be made during the last hour of operation of the sampling devices. If the proper flowrate is not maintained, the certified person is required to make a notation on the dust data card for that sample stating that the proper flowrate was not maintained. Because it is unclear where on the dust data card such a notation should be

made, proposed paragraph (c) would require all notations regarding failure to maintain proper flowrate or other events occurring during sampling that may impact the validity of the sample to be made on the back of the dust data card.

#### Section 90.204 Respirable Dust Sampling

This section, previously titled "Compliance sampling" under existing § 90.207, would be modified under the proposed rule and redesignated as § 90.204. Since the operator sampling requirement under existing § 90.208(a) would be revoked, the proposed rule would remove existing paragraph (b) and redesignate paragraph (a)(3) as (a)(2). The proposed rule would also add new paragraphs (b) and (c).

Consistent with the proposed operator sampling requirements contained in revised Part 70, MSHA would also be assuming responsibility for all sampling for compliance and abatement purposes. This sampling is currently being carried out by the operator under existing §§ 90.201(d) and 90.208(a). However, the proposed rule would continue to retain the existing provisions of § 90.207, with major changes under redesignated § 90.204. The objective of this provision is to maintain operator responsibility for verifying the suitability of the atmosphere in the position to which a new or transferred Part 90 miner would be assigned to work. This would assure that any new or existing Part 90 miner would be placed in an atmosphere which meets the applicable dust standard.

Therefore, to determine if a new Part 90 miner is working in an area of the mine where the dust concentration during each shift does not exceed 1.0 mg/m<sup>3</sup>, the operator would be required to collect five valid samples within 15 calendar days after being notified by MSHA that a Part 90 miner is employed at the mine in accordance with proposed § 90.201. The operator would also be required to collect five valid samples under proposed paragraph (a)(2) to verify the suitability of a work position to which a Part 90 miner was transferred under § 90.102. Valid samples are defined in the proposed rule as respirable dust samples collected and submitted as required by this part, and not voided by MSHA. Voided or invalid samples would not satisfy the sampling requirements and operators would be required to collect and submit additional samples. In addition, all samples required by this part would be required to be taken while the Part 90 miner is performing normal work duties. Failure to take the required number of valid samples under

proposed § 90.204 would constitute a violation. Consequently, it would be advantageous to collect and submit the samples required early during the specified 15-day period.

While the proposed rule continues the operator requirement to collect five valid samples, the results would no longer be averaged to determine whether the applicable dust standard is being continuously maintained. Instead, consistent with proposed § 72.500 of this title, each of the five valid sample will be compared to the applicable dust standard individually. Under this evaluation procedure, if all five samples are at or below the applicable dust standard, MSHA is confident that the Part 90 miner is being placed in an atmosphere which actually meets the standard. However, if any valid sample exceeds the applicable dust standard by at least 0.1 mg/m<sup>3</sup>, the operator would be required to immediately take corrective action and take an additional five valid samples from the environment of the affected Part 90 miner within 15 days following receipt of notification from MSHA. The proposed rule permits the operator to meet the applicable dust standard in either of two ways: (1) By implementing control measures to lower the dust concentration in the Part 90 miners's existing assigned position; or (2) by transferring the Part 90 miner to another area of the mine that meets the standard.

Since these samples are used to verify the suitability of the assigned work position, no operator samples will be used to make determinations as to compliance with the applicable dust standard under §§ 90.100 or 90.101 of this part. Therefore, if any of the additional samples collected under proposed paragraph (b)(2) of this section exceed the applicable dust standard by at least 0.1 mg/m<sup>3</sup>, the operator would be cited for failure to take corrective action under proposed paragraph (c) of this section.

#### Section 90.205 Respirable Dust Samples; Transmission by Operator

MSHA is proposing no substantive changes to existing § 90.209, except for removing reference to § 90.202 (Certified person; sampling) from existing paragraph (c) to eliminate repetition since revised § 90.201 specifies that all sampling required under this part must be conducted by a certified person, and redesignating it as § 90.205. Existing paragraph § 90.209(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, would require each Part 90 miner sample collected by