

the operator 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 suitability of the Part 90 miner's assigned work position in the shortest possible time requires that samples be sent promptly to MSHA for analysis.

Each transmitted sample must be accompanied by a properly completed dust data card. All dust data cards submitted must be signed by a person certified to collect samples and must include that person's certification number. By signing the card, that person certifies that the sample was collected in accordance with the requirements of this part.

To maintain program integrity, all samples transmitted by an operator would be considered by this proposed rule to fulfill the sampling requirements of this part. However, if operators wish to collect samples for other purposes, they would need to notify the district manager in writing or by electronic means prior to the intended sampling shift and identify each filter cassette to be used by its identification number. This prior notification is not required if non-approved sampling devices and filter cassettes are used by an operator for non-regulatory purposes.

Section 90.206 Respirable Dust Samples; Report to Operator and Part 90 Miners

Under the proposed rule, reporting provisions of existing § 90.210 would be revised and redesignated as § 90.206. It specifies the type of sampling data and other related information the operator would be provided by MSHA on each Part 90 miner sampled by the operator or by MSHA. The Agency believes that the proposed reporting requirements are in the best interest of the Part 90 miner. These provisions promote miner awareness of the respirable dust conditions in the Part 90 miner's working environment by making available current information on the results of all sampling-related activities. This is consistent with the statutory intent that miners play a role in preventing unhealthy conditions and practices where they work. This approach is also consistent with the recommendations of the Advisory Committee regarding miner participation in the sampling process.

In proposed paragraph (a), the phrase "The Secretary shall provide the operator" has been replaced with "MSHA will provide." Paragraphs (a)(1) through (6) of the proposed rule retains the existing requirement regarding the types of data MSHA would be reporting

on samples submitted by the operator, except for paragraph (a)(4) which would be removed since averaging of multiple valid samples would no longer be permitted under the proposed rule. Also, since MSHA would undertake sampling for compliance purposes, currently performed by the operator under existing § 90.208, the results of MSHA samples would also be reported to the operator. The data report would include the location within the mine from which each Part 90 miner sample was collected; the equivalent concentration of respirable dust for each valid sample; the occupation code, and the reason for voiding any sample. In addition to providing data on individual samples, under proposed paragraph (7), the Agency would also furnish information on the dust control measures that were being used in the work position of the sampled Part 90 miner by providing a copy of completed MSHA Form 2000-86 (Revised).

Paragraph (b) of the proposed rule retains the existing provision of requiring the operator to provide a copy of the sample data report to the affected Part 90 miner but, for privacy reasons, prohibits the operator from posting the original or a copy of this report on the mine bulletin report.

Section 90.207 Violation of Respirable Dust Standard; Issuance of Citation; Action Required by Operator; and Termination of Citation

Proposed § 90.207 is a new requirement that addresses the circumstances under which MSHA would issue a citation for violation of the applicable dust standard. It also establishes the specific actions that an operator would be required to take within the time for abatement fixed in the citation. This proposed section also sets forth the conditions under which MSHA would terminate such citations.

Under proposed paragraph (a), the operator would be cited for a violation of § 90.100 or § 90.101 when the equivalent concentration of a valid Part 90 miner sample collected by MSHA meets or exceeds the citation threshold value (CTV) listed in Table 70-2 of this title that corresponds to the applicable dust standard in effect. As discussed in section III.A.4. of the preamble, these measurements will be based on single-shift samples collected with approved sampling devices that will be operated portal-to-portal. The devices will remain operational during the entire shift or for 8 hours, whichever time is less, as has been the long-standing practice.

The CTVs and an explanation of how they were derived was originally published in **Federal Register** notice of

Feb. 3, 1998 (63 FR 5687), entitled "Coal Mine Respirable Dust Standard Noncompliance Determinations." As explained in that notice and in Appendix C of the current notice of proposed rulemaking, each CTV was calculated so that citations would be issued only when a single-shift measurement demonstrates noncompliance at least at a 95 percent confidence level.

The following example illustrates how MSHA would apply the CTVs to make noncompliance determinations. Suppose that a measurement of 1.27 mg/m³ is obtained for a Part 90 miner under a 1.0-mg/m³ standard. Because the measurement meets or exceeds the CTV of 1.26 mg/m³ (the citation value for a 1.0-mg/m³ standard), a citation would be issued for exceeding the applicable dust standard on the shift sampled. The Part 90 miner's work position would be identified in the narrative of the citation as the affected working environment.

MSHA believes that, because of the large "margin of error" separating each CTV from the corresponding applicable dust standard, use of the CTV table would provide ample protection against erroneous citations. This matter was fully explored in the analysis published in Appendix C of the February 3, 1998 notice (63 FR 5703-5709). That analysis showed that for exceptionally well-controlled environments, the probability that any given citation is erroneous will be substantially less than 5 percent. The analysis also showed that this probability is even smaller in environments that are not well controlled. Therefore, citations issued in accordance with the CTV table would be much more likely the result of an excessive dust concentration rather than a measurement error. With regard to the risk of erroneous failures to cite, MSHA concluded that "the probability of erroneously failing to cite a case of noncompliance at a given sampling location is less than 50 percent when the applicable dust standard is exceeded on a significant proportion of shifts at that location" (63 FR 5709 above).

MSHA has also concluded that using single-shift measurements for noncompliance determinations in accordance with the CTV table neither raises or lowers the applicable dust standard. Operators would continue to be required under § 90.100 or § 90.101 to continuously maintain compliance with the applicable dust standard, not merely at or below the CTV.

As explained in the notice regarding single-shift measurements of respirable coal mine dust published elsewhere in today's **Federal Register**, the Mine Act requires MSHA to regulate exposures on