

each shift individually. Since MSHA does not track the number of shifts each miner works over a lifetime, MSHA must, as a matter of practical necessity, protect miners by limiting their exposure on each shift. Furthermore, as explained in Sections VI and VII of the present notice, eliminating overexposures on individual shifts is beneficial to miners' health. For miners working where there is a pattern of recurrent overexposures on individual shifts, eliminating such overexposures is expected, over a working lifetime, to significantly reduce the risk of pneumoconiosis. Therefore, the Secretary has concluded that equivalent dust concentrations should be maintained at or below the applicable dust standard on each and every shift.

If an operator is cited for a violation of the applicable dust standard, proposed paragraphs (b)(1), (b)(2), (b)(2)(i) and (b)(2)(ii) would require the operator to take specific actions within the time for abatement fixed in the citation. First, in order to provide immediate health protection, the operator would be required to make available approved respiratory equipment to the affected Part 90 miner that complies with existing § 70.300. The operator would then determine the cause of the excessive dust concentration and take appropriate corrective action to gain compliance. As under the current Part 90 rule, the proposed rule would permit the operator to achieve compliance in either of two ways: (1) By implementing control measures to reduce the dust levels in the Part 90 miner's work position; or (2) by transferring the affected Part 90 miner to work in another location at the mine where the concentration of respirable dust does not exceed the standard. Any Part 90 miner who is transferred to another position would continue to remain a Part 90 miner at the new position, even if the job is at a surface mine.

If the operator chooses to lower dust levels in the Part 90 miner's assigned work position, proposed paragraph (b)(2)(i) would require the operator to notify the district manager in writing or by electronic means within 24 hours after implementing the control measures. Since MSHA would be assuming responsibility for compliance and abatement sampling under this proposed rule, this notice would enable MSHA to schedule and conduct follow-up sampling to determine whether the operator's corrective action(s) was effective to gain compliance.

The requirement of proposed paragraph (b)(2)(i) would not apply if the corrective action involved transferring

the Part 90 miner to another work position to achieve compliance. Instead, the operator would be required to comply with § 90.102(c) by giving the district manager written notice of the transfer and the date on which it is to be effective before such a transfer would be allowed to occur. This is necessary so that MSHA could (1) update its computerized management information system to permit the processing of the five operator samples taken from the Part 90 miner's new work position as required by proposed paragraph (b)(3) of this section and (2) schedule and conduct follow-up sampling for abatement purposes.

After complying with § 90.102(c), the operator would be required to sample the affected Part 90 miner until five valid samples were collected and submitted within the abatement period fixed in the citation. As discussed under proposed § 90.204, the purpose for taking these samples is to verify the suitability of the particular working environment in which the Part 90 miner was placed. Therefore, MSHA does not intend to take enforcement action based on the results of operator samples, only for failure to take corrective action under proposed paragraph (b)(2) of this section. Under this proposed rule, only valid samples collected by MSHA would be used to abate a violation of § 90.100 or § 90.101.

In order to determine if the operator abated the excessive dust violation, MSHA would collect one valid sample from the affected Part 90 miner's position while he or she is performing normal work duties. As discussed under § 90.201, the duration of MSHA sample collection would continue to be limited to 480 minutes as has been the long-standing practice. If the MSHA abatement sample exceeds the applicable dust standard but is less than the appropriate CTV, MSHA may sample additional shifts to confirm the adequacy of the operator's corrective action. MSHA would consider a violation of the applicable dust standard to be abated and terminate the citation when the result of a valid MSHA sample is at or below the applicable dust standard. The subsequent action form would clearly and fully describe the action taken to abate the violation. If the violation was abated by reducing the dust levels in the Part 90 miner's work position, proposed paragraph (c)(1) would require the operator to submit a respirable dust control plan to the district manager for approval in accordance with § 90.300 of this part, which has been retained under this proposed rule. A dust control plan would not be required to be submitted

if compliance was achieved by transferring the Part 90 miner to another work position at the mine.

Section 90.208 Status Change Reports

The proposed rule retains the existing provision of § 90.220, which would be redesignated as § 90.208, with some revision. It would require the operator to report in writing or by electronic means any change in status of a Part 90 miner that affects sampling to a designated MSHA District office within three working days after a status change has occurred. Knowing the status of every Part 90 miner will enable the Agency to carry out its sampling and monitoring of operator sampling activities in the most efficient and responsible manner. The operator would be in violation of § 90.208 when the operator fails to comply with the sampling requirements of this part or MSHA was unable to carry out its sampling of a particular Part 90 miner for compliance purposes due to the unavailability of the Part 90 miner that was not reported by the operator as required.

Sections 90.300 and 90.301

Respirable Dust Control Plans

Section 90.300 Respirable Dust Control Plan; Filing Requirements; Contents

The proposed rule retains the existing provisions of § 90.300, which sets forth in detail when a dust control plan must be filed and the information that the operator must include in the plan. Although the language of part of paragraph (a) of the proposed rule differs from that of the existing section, the specific requirements are essentially the same. This change was made in the proposed rule for clarity and consistency with virtually identical provisions in existing § 71.300 of this title.

If an operator abates the violation by implementing control measures that lower the dust in the Part 90 miner's work position, proposed paragraph (a) requires the operator to prepare a respirable dust control plan applicable to the Part 90 miner in the position identified in the citation. Each plan must be designed to continuously maintain the respirable dust level, in the Part 90 miner's assigned work position, at or below the applicable dust standard. This plan must be submitted to the district manager for approval within 15 days after the citation is terminated. A copy of the approved plan must be provided to the affected Part 90 miner. However, the operator is prohibited from posting the original or