

Other commenters opposed a written program. MSHA requests the mining community to submit further information for justifying a written respiratory protection program, including cost data and benefits to miners' health.

The proposed standard is based on the 1969 ANSI documentation that has been updated several times since the air quality standards were promulgated in 1973 (30 CFR 56/57.5005). The ANSI, nevertheless, recommended in its 1969 version, as well as in subsequent versions, that a standard respiratory protection program should include written procedures that address implementation information such as respirator selection, fit testing procedures, cleaning and sanitizing procedures, all of which are critical to an appropriate program. MSHA invites further comments on whether the final DPM rule should include provisions for a written respiratory protection program. Comments should address health benefits for miners, projected paperwork burden and compliance costs to the metal and nonmetal underground mining industry, and should include supporting data.

MSHA also received comments on the need for including a requirement for operators to have a miner medically examined before that miner could be required to work in an area where respiratory protection would be required. In addition, some commenters asked the agency to protect miners' jobs by implementing the requirements of § 101(a)(7) of the Mine Act. Section 101(a)(7) of the Mine Act establishes the statutory authority for MSHA to promulgate medical surveillance and transfer of miner requirements in order to prevent the miner from being exposed to health hazards. This provision of the Mine Act states, in pertinent part:

Where appropriate, such mandatory standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring miner exposure at such locations and intervals, and in such manner so as to assure the maximum protection of miners. In addition, where appropriate, any such mandatory standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the operator at his cost, to miners exposed to such hazards in order to most effectively determine whether the health of such miners is adversely affected by such exposure. Where appropriate, the mandatory standard shall provide that where a determination is made that a miner may suffer material impairment of health or functional capacity by reason of exposure to the hazard covered by such

mandatory standard, that miner shall be removed from such exposure and reassigned. Any miner transferred as a result of such exposure shall continue to receive compensation for such work at no less than the regular rate of pay for miners in the classification such miner held immediately prior to his transfer. In the event of the transfer of a miner pursuant to the preceding sentence, increases in wages of the transferred miner shall be based upon the new work classification.

Currently, MSHA standards do not require medical transfer of metal and nonmetal miners. Existing standards at 30 CFR 56/57.5005(b) for control of miners' exposure to airborne contaminants require that mine operators establish a respiratory protection program consistent with the ANSI Z88.2-1969 "American National Standard for Respiratory Protection" which includes medical determinations for potential respirator wearers. MSHA standards at 30 CFR part 90 address medical removal for coal miners and provide miners with a medical examination and an opportunity to transfer to an area of the mine having lower dust levels, at the same level of pay, when the miner has x-ray evidence of the development of pneumoconiosis.

OSHA acknowledges within its current standards addressing respiratory protection at 29 CFR 1910.134(e) that use of a respirator may place a physiological burden on workers while using them. At a minimum, OSHA requires employers to provide medical evaluations before an employee is fit tested or required to use respiratory protection. Employers are required to have a physician or other licensed health care professional have the worker complete a questionnaire, or in the alternative, conduct an initial medical examination in order to make the determination. If the worker has a positive response to certain specified questions, the employer must provide a follow-up medical examination. The questionnaire is contained in the body of the OSHA rule. The preamble to the OSHA final rule states:

Specific medical conditions can compromise an employee's ability to tolerate the physiological burdens imposed by respirator use, thereby placing the employee at increased risk of illness, injury, and even death (Exs. 64-363, 64-427). These medical conditions include cardiovascular and respiratory diseases (e.g., a history of high blood pressure, angina, heart attack, cardiac arrhythmias, stroke, asthma, chronic bronchitis, emphysema), reduced pulmonary function caused by other factors (e.g., smoking or prior exposure to respiratory hazards), neurological or musculoskeletal disorders (e.g., ringing in the ears, epilepsy, lower back pain), and impaired sensory function (e.g., a perforated ear drum, reduced

olfactory function). Psychological conditions, such as claustrophobia, can also impair the effective use of respirators by employees and may also cause, independent of physiological burdens, significant elevations in heart rate, blood pressure, and respiratory rate that can jeopardize the health of employees who are at high risk for cardiopulmonary disease (Ex. 22-14). One commenter (Ex. 54-429) emphasized the importance of evaluating claustrophobia and severe anxiety, noting that these conditions are often detected during respirator training. [See 63 FR 1152, 01/08/1998]

MSHA seeks information from the public as to whether the final rule should include requirements for medical examination and transfer of miners under the proposed DPM respiratory protection standard. Commenters should also submit cost implications of such a program and other related data.

The Agency also considered whether mine operators should be required to apply in writing to the Secretary for approval to use respiratory protection. Some commenters recommended requiring approval by the Secretary before respiratory protection should be permitted as a means of compliance with the applicable DPM limit, but MSHA was not persuaded that such a step would be necessary and MSHA's proposed § 57.5060(d) does not include this recommendation. Respiratory protection functions as a supplemental control. Operators must have ready access to respirators when they must be used as is the case where the agency has allowed metal and nonmetal mine operators to do so for many years under MSHA's air quality standards. Moreover, the proposed control plan requirements in § 57.5062 and the application for extension in § 57.5060(c) would effectively require that mine operators specify when they plan to use respirators to control a miner's DPM exposure. MSHA, therefore, would know when mine operators intend to use respirators as an interim measure until compliance can be achieved through the application of engineering and administrative controls. Further, when a mine operator is issued a citation under proposed § 57.5060(d) for a miner's exposure exceeding the applicable DPM limit, and the mine operator intends to use respiratory protection as an interim control measure, MSHA would make certain that a respiratory protection program is established and appropriate respirators are used in accordance with § 57.5005(a), (b) and proposed paragraphs § 57.5060(d)(1) and (d)(2) concerning filter selection for air-purifying respirators. Accordingly, this requirement can be deleted from the