

standing hierarchy of controls for controlling miners' exposures to DPM. In response, some commenters felt that substituting the hierarchy of controls for a DPM control plan would be unacceptable.

Commenters in favor of retaining the control plan stated that it requires mine operators to develop an organized written approach to controlling exposure and does not preclude developing a policy on the hierarchy of controls. The effectiveness of the standard depends on preparing and following a detailed control plan. Commenters believe that control plans are cost effective by forcing operators to control DPM efficiently. Control plans help MSHA determine if the company is acting in good faith. They help compliance assistance and provide information for the miners' representative to participate in safety and health programs. Commenters believe that an alternative would be a plan with more specific requirements for maintenance, vehicle inspection, emission controls, and fuel quality.

Although some commenters believe that a control plan is unnecessary, MSHA is proposing to retain this requirement. As expressed in the preamble to the existing rule, MSHA's rationale for requiring a DPM control plan is derived from the rule's approach to setting control requirements. MSHA recognizes that every mine covered by this rule has unique conditions and circumstances that affect DPM exposures such as the number and sizes of diesel-powered engines, idling duration and frequency, emission controls, diesel maintenance practices, and ventilation.

The Agency is interested in developing uniform DPM control requirements that are effective in protecting miners' health and practical for the mining industry to implement. MSHA acknowledges that there are numerous approaches in accomplishing this objective.

Operators may choose to control DPM emissions by filtering the diesel-powered equipment; installing cleaner-burning engines; increasing ventilation; improving fleet management; utilizing administrative controls; or using a variety of other readily available controls, all without consulting with, or seeking approval from MSHA. Given the wide variety of options and alternatives available to operators for controlling DPM exposures, the Agency believes that it needs to know what strategy the operator will be utilizing to control DPM exposures, particularly if compliance cannot be achieved within a short period of time.

Although MSHA is proposing to retain the control plan, the Agency, however, requests further comment on whether the control plan should be retained since MSHA is also proposing a DPM rule that includes hierarchy of controls. It is not MSHA's intent to duplicate compliance requirements in this rulemaking.

In proposed § 57.5062, MSHA would require an operator to establish a written control plan, or modify an existing control plan, if it will take the mine operator more than 90 calendar days from the date of a citation to achieve compliance. A single violation of the PEL would continue to be the basis for triggering the requirement for a control plan. The control plan would remain in effect for a one-year period following termination of the citation. Mine operators would also be required to include in the plan a description of the controls that will be used to reduce the miners' exposures to the PEL. MSHA intends to cite for a violation of the plan without regard for a miner's exposure to the PEL. MSHA believes that these requirements would prompt mine operators to properly maintain existing DPM controls at their mines.

Existing § 57.5062(e)(1) specifies that the control plan remain in effect for 3 years from the date of the violation which caused it to be established. MSHA asked the mining community for input regarding the appropriate duration of a revised control plan. Commenters responded that if the violation was minor and easily corrected, that the control plan could be simple in content and brief in duration.

MSHA believes that it is important to maintain the plan as long as the operator is working to reduce DPM exposures to the applicable limits. However, once the operator achieves compliance, MSHA believes that the need for maintaining a plan decreases. Accordingly, MSHA is proposing in § 57.5062(a) that a plan remain in effect for a period of one year after the citation is terminated.

MSHA does not intend to include a monitoring provision under the control plan because generic monitoring provisions in § 57.5071 would continue to apply during the existence of a control plan. MSHA expects mine operators to monitor as frequently as necessary to confirm that controls are effective in reducing the miners' exposure to the PEL. MSHA seeks further comment on the duration of time that the control plan should continue in effect once a citation for overexposure to DPM is terminated.

Existing § 57.5062(b) requires that the operator include in the plan a

description of the controls that will be used to maintain the concentration of diesel particulate matter to the applicable limit specified by § 57.5060, a list of the diesel-powered units maintained by the mine operator, and information about each unit's emission control device. MSHA is proposing to simplify the contents of the plan and require that it only include a description of the controls the operator will use to reduce the miners' exposures to the PEL. MSHA believes that there could be a wide variety of information that operators may want to include in their plan, and that it is not beneficial to specify a few while leaving out many others. Therefore, MSHA intends to provide maximum flexibility of compliance for mine operators. This description should include all controls that the operator is using to reduce miners' exposures, including engineering controls, administrative controls, personal protective equipment, and maintenance procedures, to name a few.

Existing § 57.5062(e)(3) requires an operator to modify a DPM control plan during its duration as required to reflect changes in controls, mining equipment or circumstances. MSHA did not receive any comments in response to its ANPRM regarding modifications to the plan.

MSHA is proposing to retain this particular requirement consistent with the existing rule, with one minor modification. Proposed § 57.5062(c) would require that the operator modify the plan to reflect changes in controls, mining equipment, or continuing noncompliance. This would require mine operators to modify their plan when the results of sampling conducted by MSHA or the mine operator indicates that a miner's exposure exceeds the PEL. MSHA does not believe that this change will result in an increase in compliance costs or paperwork. The change is intended to clarify the existing provision. MSHA did not receive comments to its ANPRM on this issue.

Existing § 57.5062(a)(2) requires that the operator demonstrate that the new or modified DPM control plan parameters control the concentration of DPM to the concentration limit specified in § 57.5060. Mine operators must demonstrate plan effectiveness by monitoring, using the measurement method specified by § 57.5061(b) which addresses compliance determinations. Such monitoring must be sufficient to verify that the plan will control the concentration of DPM to the limit under conditions that can be reasonably anticipated in the mine. Further, the operator must retain a copy of each