

would have led to a numerically greater and more protective adjustment, but this would also have introduced additional complexities in the calculation of equivalent concentration measurements. The Secretary believes that the method chosen strikes a reasonable balance between no adjustment at all, and a far more complex adjustment that would attempt to model clearance, deposition, and retention mechanisms.

Mechanized Mining Unit (MMU)

The existing definition would be modified by removing the reference to § 70.207(e) (Bimonthly sampling; mechanized mining units), which will be deleted, and replaced with proposed § 70.206(d); and transfers the requirements for identifying each MMU specified in existing §§ 70.207(f)(1) and (f)(2), to revised § 70.2.

MRE

“MRE” would mean Mining Research Establishment of the National Coal Board, London, England. This is a new definition which has been included to be consistent with revised § 70.2.

Quartz

The existing definition would be modified by specifying the analytical method that MSHA has been using since 1983 to determine the quartz content of respirable dust samples. The reason for this modification is to standardize the analytical procedure, thereby enabling other certified laboratories to reproduce quartz determinations made by MSHA. Also, to accommodate the adoption of improved or other quartz analytical techniques in the future, the definition of “quartz” has been expanded in the proposed rule to provide MSHA the flexibility to use alternative analytical techniques once these techniques have been demonstrated to provide quartz measurements that are equivalent to those obtained under current analytical method.

Respirable Dust

The existing definition has been modified by transferring the requirement regarding what constitutes an approved sampling device to the proposed new definition of the term “approved sampling device” above.

Transfer

The existing definition has been modified by clarifying when a change in work assignment would not constitute a transfer under proposed Part 90. MSHA recognizes that there may be circumstances which are beyond the control of the operator, such as equipment malfunction, that may

interrupt work being performed by a Part 90 miner in his or her regular work assignment, necessitating the assignment of the Part 90 miner to another job temporarily. For example, if the Part 90 miner is regularly assigned as a shuttle car operator in a MMU and the continuous mining machine breaks down, that Part 90 miner could be temporarily assigned to work in a different position and location in the mine. Consistent with MSHA's longstanding policy, such a change in duties would not constitute a transfer under Part 90 if the assignment does not last more than one shift. If such an assignment lasts longer than one shift, the operator would be required to notify the district manager in writing. This notice would list the temporary duties and the reasons for the assignment. Also, to demonstrate compliance with the applicable dust standard, the operator would be required to collect five valid samples from the newly assigned work position under proposed § 90.204(a)(2). The 1.0-mg/m³ standard remains in effect even if the operator is unable to collect the required number of samples because of the short duration of the temporary assignment.

Section 90.3 Part 90 Option; Notice of Eligibility; Exercise of Option

This section remains the same, with the exception of paragraphs (d) and (e) which have been revised to reflect the new address for mailing of the Exercise of Option Form or written request to re-exercise the option to work in a low-dust area of the mine.

Sections 90.100 Through 90.104

Dust Standards, Rights of Part 90 Miners

Section 90.100 Respirable Dust Standard When Quartz Is Not Present

MSHA is proposing no substantive changes in existing § 90.100, except for revising the section heading to correspond with the heading of proposed § 70.100, which is identical, and removing the reference to § 90.206 (Approved sampling devices; equivalent concentrations) and replacing it with § 90.2. The requirements contained in revised § 90.2 are similar to the standard in existing § 90.206. The proposed rule retains the applicable dust standard of 1.0 mg/m³.

Section 90.101 Respirable Dust Standard When Quartz Is Present

The proposed rule would revise the section heading to correspond with the heading of proposed § 70.101, which is identical. MSHA would retain the existing formula (10 divided by the concentration of quartz, expressed as a

percentage) for reducing the applicable dust standard below 1.0 mg/m³ in proportion to the percentage of quartz when the quartz content of respirable dust in the mine atmosphere exceeds 10 percent, instead of 5 percent as contained in existing § 90.101. Since the maximum standard for a Part 90 miner is 1.0 mg/m³, the quartz content must exceed 10 percent to cause a reduction in the applicable dust standard.

The Agency would change the procedures for determining the average quartz percentage used to calculate the applicable dust standard. Only the results of MSHA samples would be used to establish the applicable dust standard. The quartz results of the three most recent valid MSHA samples would be averaged and the resultant percentage used to set the new applicable dust standard. However, if the Part 90 miner is already assigned to an area of the mine under a reduced standard below 1.0 mg/m³ when these revised procedures become effective, a new applicable dust standard would be established by averaging the results of the first two MSHA samples taken after the effective date with the quartz percentage associated with the applicable dust standard in effect. If fewer than two MSHA samples are taken, the existing standard would continue to remain in effect.

Application of the revised procedures will result in the setting of reduced standards in a timely manner that (1) more accurately represent the quartz percentage of respirable dust in the environment of the Part 90 miner at the time of sampling; (2) reflect the dynamics of the mining process and the changing geologic conditions of the mine strata; and (3) continue to protect Part 90 miners over multiple shifts.

Under the proposed rule, MSHA would also report the quartz percentage to the nearest tenth of a percent, instead of truncating the results to the nearest full percentage as has been the longstanding practice. While this change will have no impact on the setting of applicable dust standards below 1.0 mg/m³, it will be more protective for other miners because it permits the setting of reduced standards at such levels as 1.1 mg/m³, 1.4 mg/m³, 1.6 mg/m³, 1.8 mg/m³, and 1.9 mg/m³. Setting these particular standards currently is not mathematically possible using the above formula due to the practice of truncating the average quartz percentage. Another change involves removing the reference to § 90.206 (Approved sampling devices; equivalent concentrations) and replacing it with § 90.2. The requirements contained in revised § 90.2 are similar to the standard