

used at the dust generating sources for these locations.

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8. Part 90 is revised to read as follows:

**PART 90—MANDATORY HEALTH STANDARDS—COAL MINERS WHO HAVE EVIDENCE OF THE DEVELOPMENT OF PNEUMOCONIOSIS**

**Subpart A—General**

Sec.

90.1 Scope.

90.2 Definitions.

90.3 Part 90 option; notice of eligibility; exercise of option.

**Subpart B—Dust Standards, Rights of Part 90 Miners**

90.100 Respirable dust standard when quartz is not present.

90.101 Respirable dust standard when quartz is present.

90.102 Transfer; notice.

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90.104 Waiver of rights; re-exercise of option.

**Subpart C—Sampling Procedures**

90.201 Sampling; general requirements.

90.202 Approved sampling devices; maintenance and calibration.

90.203 Approved sampling devices; operation; air flowrate.

90.204 Respirable dust sampling.

90.205 Respirable dust samples; transmission by operator.

90.206 Respirable dust samples; report to operator and Part 90 miner.

90.207 Violation of respirable dust standard; issuance of citation; action required by operator; and termination of citation.

90.208 Status change reports.

**Subpart D—Respirable Dust Control Plans**

90.300 Respirable dust control plan; filing requirements; contents.

90.301 Respirable dust control plan; approval by district manager; copy to Part 90 miner.

**Authority:** 30 U.S.C. 811, 813(h).

**Subpart A—General**

**§ 90.1 Scope.**

This Part 90 establishes the option of miners who are employed at underground coal mines or at surface work areas of underground coal mines and who have evidence of the development of pneumoconiosis to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift is continuously maintained at or below 1.0 milligrams per cubic meter of air. The proposed rule sets forth procedures for miners to exercise this option, and establishes the right of miners to retain their regular rate of pay and receive wage increases. The

proposed rule also sets forth the operator's obligations, including respirable dust sampling for Part 90 miners. This Part 90 is promulgated pursuant to section 101 of the Act and supercedes section 203(b) of the Act.

**§ 90.2 Definitions.**

*Act.* The Federal Mine Safety and Health Act of 1977, Public Law 95-164, 30 U.S.C. 801 *et seq.*

*Active workings.* Any place in a coal mine where miners are normally required to work or travel.

*Approved sampling device.* A sampling device of the constant-flow type:

(1) Approved by the Secretary and the Secretary of Health and Human Services under part 74 of this title; or

(2) Approved by the Secretary when it has been determined that the measured concentration of respirable dust can be converted to an equivalent concentration as measured with a sampling device approved under part 70 of this title.

*Certified person.* An individual certified by the Secretary to take respirable dust samples and/or to perform the maintenance and calibration of approved sampling devices.

*Citation threshold value (CTV).* The lowest equivalent concentration measurement demonstrating that the applicable dust standard has been exceeded at a confidence level of at least 95 percent.

*Concentration.* The amount of respirable dust contained per unit volume of air.

*District manager.* The manager of the Coal Mine Safety and Health District in which the mine is located.

*Equivalent concentration.* The concentration of respirable coal mine dust, as measured by an approved sampling device, converted to an MRE 8-hour equivalent as follows:

(1) Multiply the concentration measured by the approved sampling device by the constant factor prescribed by the Secretary for that device and then apply criteria in paragraph (2) of this definition if applicable.

(2) If the sampled shift is longer than 8 hours, multiply the concentration obtained in paragraph (1) of this definition by  $t/480$  where  $t$  is the length of the sampled work shift in minutes.

*Mechanized mining unit (MMU).* A set of mining equipment, including hand loading equipment, used for the production of material; or a specialized set which utilizes mining equipment other than specified in § 70.206(d). Each MMU is assigned a four-digit

identification number by MSHA. The identification number is retained by the MMU regardless of where the unit relocates within the mine. When two sets of mining equipment are provided in a series of working places and only one production crew is employed at any given time on either set of mining equipment, the two sets of equipment are identified as a single MMU. When two or more MMUs are simultaneously engaged in the production of material within the same working section, each such MMU is identified separately.

*MRE.* The Mining Research Establishment of the National Coal Board, London, England.

*MRE instrument.* A gravimetric dust sampler with a four channel horizontal elutriator developed by the MRE.

*MSHA.* The Mine Safety and Health Administration of the Department of Labor.

*Normal work duties.* Duties which the Part 90 miner performs on a routine day-to-day basis in his or her job classification at a mine.

*Part 90 miner.* A miner employed at an underground coal mine or at a surface work area of an underground coal mine who has exercised the option under the old section 203(b) program, or under § 90.3 of this part to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed is continuously maintained at or below 1.0 milligrams per cubic meter of air ( $\text{mg}/\text{m}^3$ ), and who has not waived these rights.

*Quartz.* Crystalline silicon dioxide ( $\text{SiO}_2$ ) as measured by:

(1) MSHA's Analytical Method P-7: Infrared Determination of Quartz in Respirable Coal Mine Dust; or

(2) Any method approved by MSHA as providing a measurement of quartz equivalent to that measured by Analytical Method P-7.

*Respirable dust.* Dust collected with an approved sampling device.

*Secretary.* The Secretary of Labor or a designee.

*Surface work area of an underground coal mine.* The surface areas of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, excavations, and other property, real or personal, placed upon or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting bituminous coal, lignite, or anthracite from its natural deposits underground by any means or method, and the work of preparing extracted coal, and includes custom coal preparation facilities.