

Transfer. (1) Any change in the work assignment of a Part 90 miner by the operator and includes—

(i) any change in occupation code of a Part 90 miner;

(ii) any movement of a Part 90 miner to or from a MMU; or

(iii) any assignment of a Part 90 miner to the same occupation in a different location at a mine.

(2) A change in work assignment that lasts no longer than one shift would not constitute a transfer under Part 90 if circumstances beyond the control of the operator interrupt work being performed by a Part 90 miner because of equipment malfunction or absenteeism, and necessitate the operator to temporarily assign the Part 90 miner to perform work duties outside of his or her regular work classification.

Underground coal mine. An area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person, used in, or to be used in, or resulting from the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted.

Valid sample. A respirable dust sample collected and submitted as required by this part, and not voided by MSHA.

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

(a) Any miner employed at an underground coal mine or at a surface work area of an underground coal mine who, in the judgment of the Secretary of Health and Human Services, has evidence of the development of pneumoconiosis based on a chest X-ray, read and classified in the manner prescribed by the Secretary of Health and Human Services, or based on other medical examinations must be afforded the option 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 (mg/m^3). Each of these miners must be notified in writing of eligibility to exercise the option.

(b) Any miner who is a section 203(b) miner on January 31, 1981, must be a Part 90 miner on February 1, 1981, entitled to full rights under this part to retention of pay rate, future actual wage increases, and future work assignment shift and respirable dust protection.

(c) Any Part 90 miner who is transferred to a position at the same or another coal mine must remain a Part 90 miner entitled to full rights under this part at the new work assignment.

(d) The option to work in a low dust area of the mine may be exercised for the first time by any miner employed at an underground coal mine or at a surface work area of an underground coal mine who was eligible for the option under the old section 203(b) program, or is eligible for the option under this part by signing and dating the Exercise of Option Form and mailing the form to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, 1100 Wilson Boulevard, Arlington, Virginia 22209.

(e) The option to work in a low dust area of the mine may be re-exercised by any miner employed at an underground coal mine or at a surface work area of an underground coal mine who exercised the option under the old section 203(b) program, or exercised the option under this part by sending a written request to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, 1100 Wilson Boulevard, Arlington, Virginia 22209. The request should include the name and address of the mine and operator where the miner is employed.

(f) No operator shall require from a miner a copy of the medical information or notification of any chest X-ray evaluation received from the Secretary or Secretary of Health and Human Services.

Subpart B—Dust Standards, Rights of Part 90 Miners

§ 90.100 Respirable dust standard when quartz is not present.

After the 20th calendar day following receipt of notification from MSHA that a Part 90 miner is employed at the mine, the operator must continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which the Part 90 miner in the active workings of the mine is exposed at or below $1.0 \text{ mg}/\text{m}^3$, as measured with an approved sampling device and in terms of an equivalent concentration determined in accordance with § 90.2.

§ 90.101 Respirable dust standard when quartz is present.

When the respirable dust in the mine atmosphere of the active workings to which a Part 90 miner is exposed contains more than 10 percent quartz, as determined by the average of the most recent three MSHA samples, the operator must continuously maintain

the average concentration of respirable dust in the mine atmosphere during each shift to which a Part 90 miner is exposed at or below the applicable dust standard, as measured with an approved sampling device and in terms of an equivalent concentration determined in accordance with § 90.2. The applicable dust standard is determined by dividing the average quartz percentage into the number 10. The application of the formula must not result in an applicable dust standard in excess of $1.0 \text{ mg}/\text{m}^3$.

Example: Assume a Part 90 miner is on a $1.0 \text{ mg}/\text{m}^3$ applicable dust standard (10% quartz or less). If the first MSHA sample contains 12.2% of quartz, and the required two subsequent samples contained 14.6% and 10.4%, respectively, the average quartz percentage would be 12.4% [$(12.2\% + 14.6\% + 10.4\%)/3 = 12.4\%$]. Therefore, the average concentration of respirable dust in the mine atmosphere associated with that Part 90 miner must, on each shift, be maintained at or below $0.8 \text{ mg}/\text{m}^3$ [$10/12.4\% = 0.8 \text{ mg}/\text{m}^3$].

§ 90.102 Transfer; notice.

(a) Whenever a Part 90 miner is transferred in order to meet the applicable dust standard in §§ 90.100 or 90.101, the operator must transfer the miner to an existing position at the same coal mine on the same shift or shift rotation on which the miner was employed immediately before the transfer. The operator may transfer a Part 90 miner to a different coal mine, a newly-created position or a position on a different shift or shift rotation if the miner agrees in writing to the transfer. The requirements of this paragraph do not apply when a Part 90 miner's work position complies with the applicable dust standard but circumstances, such as reductions in workforce or changes in operational methods, require a change in the miner's job or shift assignment.

(b) On or before the 20th calendar day following receipt of notification from MSHA that a Part 90 miner is employed at the mine, the operator must give the district manager written notice of the occupation and, if applicable, the mechanized mining unit to which the Part 90 miner will be assigned on the 21st calendar day following receipt of the notification from MSHA.

(c) After the 20th calendar day following receipt of notification from MSHA that a Part 90 miner is employed at the mine, the operator must give the district manager written notice before any transfer of a Part 90 miner. This notice must include the scheduled date of the transfer.

§ 90.103 Compensation.

(a) The operator must compensate each Part 90 miner at not less than the regular rate of pay received by that