

Mine Safety and Health Admin., Labor

§ 90.1

§ 77.1916 Welding, cutting, and soldering; fire protection.

(a) One portable fire extinguisher shall be provided where welding, cutting, or soldering with arc or flame is performed.

(b) Welding, cutting, or soldering with arc or flame within or in the vicinity of any slope or shaft, except where such operations are performed in fireproof enclosures, shall be done under the supervision of a qualified person who shall make a diligent search within or in the vicinity of the slope or shaft for fire during and after such operations.

(c) Before welding, cutting, or soldering is performed in any slope or shaft designed to penetrate into any coalbed below the surface, an examination for methane shall be made by a qualified person with a device approved by the Secretary for detecting methane. Examination for methane shall be made immediately before and periodically during welding, cutting, or soldering and such work shall not be permitted to commence or continue in air which contains 1.0 volume per centum or more of methane.

(d) Noncombustible barriers shall be installed below welding, cutting, or soldering operations in or over a shaft.

Subpart U—Approved Books and Records [Reserved]

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

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AUTHORITY: 30 U.S.C. 811, 813(h), 957.

SOURCE: 45 FR 80769, Dec. 5, 1980, unless otherwise noted.

Subpart A—General

SOURCE: 79 FR 24988, May 1, 2014, unless otherwise noted.

§ 90.1 Scope.

This part 90 establishes the option of miners who are employed at 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 the applicable standard as specified in § 90.100. The 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 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 supersedes section 203(b) of the Federal Mine Safety and Health Act of 1977, as amended.

§ 90.2 Definitions.

The following definitions apply in this part:

Act. The Federal Mine Safety and Health Act of 1977, Public Law 91-173, as amended by Public Law 95-164 and Public Law 109-236.

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

Approved sampling device. A sampling device approved by the Secretary and Secretary for Health and Human Services (HHS) under part 74 of this title.

Certified person. An individual certified by the Secretary in accordance with § 90.202 to take respirable dust samples required by this part or certified in accordance with § 90.203 to perform the maintenance and calibration of respirable dust sampling equipment as required by this part.

Coal mine dust personal sampler unit (CMDPSU). A personal sampling device approved under part 74, subpart B, of this title.

Concentration. A measure of the amount of a substance contained per unit volume of air.

Continuous personal dust monitor (CPDM). A personal sampling device approved under part 74, subpart C, of this title.

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, including quartz, expressed in milligrams per cubic meter of air (mg/m³) as measured with an approved sampling device, determined by dividing the weight of dust in milligrams collected on the filter of an approved sampling device by the volume of air in cubic meters passing through the filter (sampling time in minutes (t) times the sampling airflow rate in cubic meters per minute), and then converting that concentration to an equivalent concentration as measured by the Mining Research Establishment (MRE) instrument. When the approved sampling device is:

(1) The CMDPSU, the equivalent concentration is determined by multiplying the concentration of respirable coal mine dust by the constant factor prescribed by the Secretary.

(2) The CPDM, the device shall be programmed to automatically report end-of-shift concentration measurements as equivalent concentrations.

Mechanized mining unit (MMU). A unit of mining equipment including hand loading equipment used for the production of material; or a specialized unit which uses mining equipment other than specified in § 70.206(b) or in § 70.208(b) of this chapter. Each MMU will be assigned a four-digit identification number by MSHA, which is retained by the MMU regardless of where the unit relocates within the mine. However, when:

(1) Two sets of mining equipment are used in a series of working places within the same working section and only one production crew is employed at any given time on either set of mining equipment, the two sets of equipment shall be identified as a single MMU.

(2) Two or more sets of mining equipment are simultaneously engaged in cutting, mining, or loading coal or rock from working places within the same working section, each set of mining equipment shall be identified as a separate MMU.

MRE instrument. The gravimetric dust sampler with a four channel horizontal elutriator developed by the Mining Research Establishment of the National Coal Board, London, England.

MSHA. The Mine Safety and Health Administration of the U.S. 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 a coal mine who has exercised the option under the old section 203(b) program (36 FR 20601, October 27, 1971), 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 the applicable standard, and who has not waived these rights.

Quartz. Crystalline silicon dioxide (SiO₂) not chemically combined with other substances and having a distinctive physical structure.

Representative sample. A respirable dust sample, expressed as an equivalent concentration, that reflects typical dust concentration levels in the working environment of the part 90 miner when performing normal work duties.

Respirable dust. Dust collected with a sampling device approved by the Secretary and the Secretary of HHS in accordance with part 74 (Coal Mine Dust Sampling Devices) of this title.

Secretary. The Secretary of Labor or a delegate.

Secretary of Health and Human Services. The Secretary of Health and Human Services (HHS) or the Secretary of Health, Education, and Welfare.

Transfer. Any change in the work assignment of a part 90 miner by the operator and includes: (1) Any change in occupation code of a part 90 miner; (2) any movement of a part 90 miner to or from an MMU; or (3) any assignment of a part 90 miner to the same occupation in a different location at a mine.

Valid respirable dust sample. A respirable dust sample collected and submitted as required by this part, including any sample for which the data were electronically transmitted to MSHA, and not voided by MSHA.

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

(a) Any miner employed at a coal mine who, in the judgment of the Secretary of HHS, has evidence of the development of pneumoconiosis based on a chest X-ray, read and classified in the manner prescribed by the Secretary of HHS, or based on other medical examinations shall 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 the applicable standard. Each of these miners shall be notified in writing of eligibility to exercise the option.

(b) Any miner who is a section 203(b) miner on January 31, 1981, shall 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 shall 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 a coal mine who was eligible for the option under the old section 203(b) program (<http://www.msha.gov/REGSTECHAMEND.htm>), or is eligible for the option under this part by sending a written request to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, 201 12th Street South, Arlington, VA 22202-5452.

(e) The option to work in a low dust area of the mine may be re-exercised by any miner employed at a coal mine who exercised the option under the old section 203(b) program (<http://www.msha.gov/REGSTECHAMEND.htm>) or exercised the option under this part by sending a written request to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, 201 12th Street South, Arlington, VA 22202-5452. 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 received from the Secretary or Secretary of HHS.

[79 FR 24988, May 1, 2014, as amended at 80 FR 52993, Sept. 2, 2015]

Subpart B—Dust Standards, Rights of Part 90 Miners

SOURCE: 79 FR 24989, May 1, 2014, unless otherwise noted.

§90.100 Respirable dust standard.

After the 20th calendar day following receipt of notification from MSHA that a part 90 miner is employed at the mine, the operator shall 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, as measured with an approved sampling device and expressed in terms of an equivalent concentration, at or below:

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(a) 1.0 milligrams of respirable dust per cubic meter of air (mg/m^3).

(b) 0.5 mg/m^3 as of August 1, 2016.

§ 90.101 Respirable dust standard when quartz is present.

(a) Each operator shall continuously maintain the average concentration of respirable quartz dust in the mine atmosphere during each shift to which a part 90 miner in the active workings of each mine is exposed at or below 0.1 mg/m^3 (100 micrograms per cubic meter or $\mu\text{g}/\text{m}^3$) as measured with an approved sampling device and expressed in terms of an equivalent concentration.

(b) When the mine atmosphere of the active workings where the part 90 miner performs his or her normal work duties exceeds 100 $\mu\text{g}/\text{m}^3$ of respirable quartz dust, the operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which a part 90 miner is exposed as measured with an approved sampling device and expressed in terms of an equivalent concentration at or below the applicable standard. The applicable standard is computed by dividing the percent of quartz into the number 10. The application of this formula shall not result in an applicable standard that exceeds the standards specified in § 90.100.

Example: Assume the part 90 miner is on a 0.5 mg/m^3 dust standard. Suppose a valid representative dust sample with an equivalent concentration of 0.50 mg/m^3 contains 25.6% of quartz dust, which corresponds to a quartz concentration of 128 $\mu\text{g}/\text{m}^3$. Therefore, the average concentration of respirable dust in the mine atmosphere associated with that part 90 miner shall be maintained on each shift at or below 0.4 mg/m^3 ($10/25.6\% = 0.4 \text{ mg}/\text{m}^3$).

§ 90.102 Transfer; notice.

(a) Whenever a part 90 miner is transferred in order to meet the applicable standard, the operator shall 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

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the miner agrees in writing to the transfer. The requirements of this paragraph do not apply when the respirable dust concentration in a part 90 miner's work position complies with the applicable standard but circumstances, such as reductions in workforce or changes in operational status, 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 shall give the District Manager written notice of the occupation and, if applicable, the MMU unit to which the part 90 miner shall 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 shall give the District Manager written notice before any transfer of a part 90 miner. This notice shall include the scheduled date of the transfer.

§ 90.103 Compensation.

(a) The operator shall compensate each part 90 miner at not less than the regular rate of pay received by that miner immediately before exercising the option under § 90.3.

(b) Whenever a part 90 miner is transferred, the operator shall compensate the miner at not less than the regular rate of pay received by that miner immediately before the transfer.

(c) Once a miner has been placed in a position in compliance with the provisions of part 90, paragraphs (a) and (b) of this section do not apply when the part 90 miner initiates and accepts a change in work assignment for reasons of job preference.

(d) The operator shall compensate each miner who is a section 203(b) miner on January 31, 1981, at not less than the regular rate of pay that the miner is required to receive under section 203(b) of the Act immediately before the effective date of this part.

(e) In addition to the compensation required to be paid under paragraphs (a), (b), and (d) of this section, the operator shall pay each part 90 miner the actual wage increases that accrue to

the classification to which the miner is assigned.

(f) If a miner is temporarily employed in an occupation other than his or her regular work classification for two months or more before exercising the option under §90.3, the miner's regular rate of pay for purposes of paragraph (a) and (b) of this section is the higher of the temporary or regular rates of pay. If the temporary assignment is for less than two months, the operator may pay the part 90 miner at his or her regular work classification rate regardless of the temporary wage rate.

(g) If a part 90 miner is transferred, and the Secretary subsequently notifies the miner that notice of the miner's eligibility to exercise the part 90 option was incorrect, the operator shall retain the affected miner in the current position to which the miner is assigned and continue to pay the affected miner the applicable rate of pay provided in paragraphs (a), (b), (d), and (e) of this section, until:

(1) The affected miner and operator agree in writing to a position with pay at not less than the regular rate of pay for that occupation; or

(2) A position is available at the same coal mine in both the same occupation and on the same shift on which the miner was employed immediately before exercising the option under §90.3 or under the old section 203(b) program (36 FR 20601, October 27, 1971).

(i) When such a position is available, the operator shall offer the available position in writing to the affected miner with pay at not less than the regular rate of pay for that occupation.

(ii) If the affected miner accepts the available position in writing, the operator shall implement the miner's reassignment upon notice of the miner's acceptance. If the miner does not accept the available position in writing, the miner may be reassigned and protections under part 90 shall not apply. Failure by the miner to act on the written offer of the available position within 15 days after notice of the offer is received from the operator shall operate as an election not to accept the available position.

§ 90.104 Waiver of rights; re-exercise of option.

(a) A part 90 miner may waive his or her rights and be removed from MSHA's active list of miners who have rights under part 90 by:

(1) Giving written notification to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, that the miner waives all rights under this part;

(2) Applying for and accepting a position in an area of a mine which the miner knows has an average respirable dust concentration exceeding the applicable standard; or

(3) Refusing to accept another position offered by the operator at the same coal mine that meets the requirements of §§90.100, 90.101 and 90.102(a) after dust sampling shows that the present position exceeds the applicable standard.

(b) If rights under part 90 are waived, the miner gives up all rights under part 90 until the miner re-exercises the option in accordance with §90.3(e) (Part 90 option; notice of eligibility; exercise of option).

(c) If rights under part 90 are waived, the miner may re-exercise the option under this part in accordance with §90.3(e) (Part 90 option; notice of eligibility; exercise of option) at any time.

Subpart C—Sampling Procedures

SOURCE: 79 FR 24990, May 1, 2014, unless otherwise noted.

§ 90.201 Sampling; general and technical requirements.

(a) An approved coal mine dust personal sampler unit (CMDPSU) shall be used to take samples of the concentration of respirable coal mine dust in the working environment of each part 90 miner as required by this part. On February 1, 2016, part 90 miners shall be sampled only with an approved continuous personal dust monitor (CPDM) as required by this part and an approved CMDPSU shall not be used, unless notified by the Secretary to continue to use an approved CMDPSU to conduct quarterly sampling.

(b) If using a CMDPSU, the sampling device shall be worn or carried to and from each part 90 miner. If using a CPDM, the sampling device shall be

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worn by the part 90 miner at all times. Approved sampling devices shall be operated portal-to-portal and shall remain operational during the part 90 miner's entire shift, which includes the time spent performing normal work duties and while traveling to and from the assigned work location. If the work shift to be sampled is longer than 12 hours and the sampling device is:

(1) A CMDPSU, the operator shall switch-out the unit's sampling pump prior to the 13th-hour of operation.

(2) A CPDM, the operator shall switch-out the CPDM with a fully charged device prior to the 13th-hour of operation.

(c) Unless otherwise directed by the District Manager, the respirable dust samples required under this part using a CMDPSU shall be taken by placing the sampling device as follows:

(1) On the part 90 miner;

(2) On the piece of equipment which the part 90 miner operates within 36 inches of the normal working position; or

(3) At a location that represents the maximum concentration of dust to which the part 90 miner is exposed.

(d) If using a CMDPSU, one control filter shall be used for each shift of sampling. Each control filter shall:

(1) Have the same pre-weight date (noted on the dust data card) as the filter used for sampling;

(2) Remain plugged at all times;

(3) Be used for the same amount of time, and exposed to the same temperature and handling conditions as the filter used for sampling; and

(4) Be kept with the exposed samples after sampling and in the same mailing container when transmitted to MSHA.

(e) The respirable dust samples required by this part and taken with a CMDPSU shall be collected while the part 90 miner is performing normal work duties.

(f) Records showing the length of each shift for each part 90 miner shall be made and retained for at least six months, and shall be made available for inspection by authorized representatives of the Secretary and submitted to the District Manager when requested in writing.

(g) Upon request from the District Manager, the operator shall submit the

date and time any respirable dust sampling required by this part will begin. This information shall be submitted at least 48 hours prior to scheduled sampling.

(h) Operators using CPDMs shall provide training to all part 90 miners. The training shall be completed prior to a part 90 miner wearing a CPDM and then every 12 months thereafter. The training shall include:

(1) The importance of monitoring dust concentrations and properly wearing the CPDM;

(2) Explaining the basic features and capabilities of the CPDM;

(3) Discussing the various types of information displayed by the CPDM and how to access that information; and

(4) How to start and stop a short-term sample run during compliance sampling.

(i) An operator shall keep a record of the CPDM training at the mine site for 24 months after completion of the training. An operator may keep the record elsewhere if the record is immediately accessible from the mine site by electronic transmission. Upon request from an authorized representative of the Secretary or Secretary of HHS, the operator shall promptly provide access to any such training records. The record shall include:

(1) The date of training;

(2) The names of miners trained; and

(3) The subjects included in the training.

(j) An anthracite mine using the full box, open breast, or slant breast mining method may use either a CPDM or a CMDPSU to conduct the required sampling. The mine operator shall notify the District Manager in writing of its decision to not use a CPDM.

§ 90.202 Certified person; sampling.

(a) The respirable dust sampling required by this part shall be performed by a certified person.

(b) To be certified, a person shall complete the applicable MSHA course of instruction and pass the MSHA examination demonstrating competency in sampling procedures. Persons not certified in sampling and those certified only in maintenance and calibration procedures in accordance with § 90.203(b) are not permitted to collect

respirable dust samples required by this part or handle approved sampling devices when being used in sampling.

(c) To maintain certification, a person must pass the MSHA examination demonstrating competency in sampling procedures every three years.

(d) MSHA may revoke a person's certification for failing to properly carry out the required sampling procedures.

§ 90.203 Certified person; maintenance and calibration.

(a) Approved sampling devices shall be maintained and calibrated by a certified person.

(b) To be certified, a person shall complete the applicable MSHA course of instruction and pass the MSHA examination demonstrating competency in maintenance and calibration procedures for approved sampling devices. Necessary maintenance of the sampling head assembly of a CMDPSU, or the cyclone assembly of a CPDM, can be performed by persons certified in sampling or in maintenance and calibration.

(c) To maintain certification, a person must pass the MSHA examination demonstrating competency in maintenance and calibration procedures every three years.

(d) MSHA may revoke a person's certification for failing to properly carry out the required maintenance and calibration procedures.

§ 90.204 Approved sampling devices; maintenance and calibration.

(a) Approved sampling devices shall be maintained as approved under part 74 of this title and calibrated in accordance with MSHA Informational Report IR 1240 (1996) "Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers" or in accordance with the manufacturer's recommendations if using a CPDM. Only persons certified in maintenance and calibration can perform maintenance on the CPDM or the pump unit of the CMDPSU.

(b) Approved sampling devices shall be calibrated at the flowrate of 2.0 liters of air per minute (L/min) if using a CMDPSU; at 2.2 L/min if using a CPDM; or at a different flowrate recommended by the manufacturer, before they are put into service and, there-

after, at time intervals recommended by the manufacturer or prescribed by the Secretary or Secretary of HHS.

(c) If using a CMDPSU, sampling devices shall be examined and tested by a person certified in sampling or in maintenance and calibration within 3 hours before the start of the shift on which the approved sampling devices will be used to collect respirable dust samples. This is to assure that the sampling devices are clean and in proper working condition. This examination and testing shall include the following:

(1) Examination of all components of the cyclone assembly to assure that they are clean and free of dust and dirt. This includes examining the interior of the connector barrel (located between the cassette assembly and vortex finder), vortex finder, cyclone body, and grit pot;

(2) Examination of the inner surface of the cyclone body to assure that it is free of scoring or scratch marks on the inner surface of the cyclone where the air flow is directed by the vortex finder into the cyclone body;

(3) Examination of the external hose connecting the pump unit to the sampling head assembly to assure that it is clean and free of leaks; and

(4) Examination of the clamping and positioning of the cyclone body, vortex finder, and cassette to assure that they are rigid, in alignment, firmly in contact, and airtight.

(5) Testing the voltage of each battery while under actual load to assure the battery is fully charged. This requires that a fully assembled and examined sampling head assembly be attached to the pump inlet with the pump unit running when the voltage check is made. The voltage for batteries used in the CMDPSU shall not be lower than the product of the number of cells in the battery multiplied by the manufacturer's nominal voltage per cell.

(d) If using a CPDM, the certified person in sampling or in maintenance and calibration shall:

(1) Follow the pre-operational examinations, testing, and set-up procedures,

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and perform necessary external maintenance recommended by the manufacturer to assure the operational readiness of the CPDM within 3 hours before the start of the shift on which the sampling device will be used to collect respirable dust samples; and

(2) Perform other required scheduled examinations and maintenance procedures recommended by the manufacturer.

(e) You must proceed in accordance with “Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers,” MSHA Informational Report IR 1240 (1996), referenced in paragraph (a) of this section. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the MSHA Web site at <http://www.msha.gov> and you may inspect or obtain a copy at MSHA, Coal Mine Safety and Health, 201 12th Street South, Arlington, VA 22202-5452; 202-693-9500; and at each MSHA Coal Mine Safety and Health District Office, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

[79 FR 24990, May 1, 2014, as amended at 80 FR 52993, Sept. 2, 2015]

§ 90.205 Approved sampling devices; operation; air flowrate.

(a) Approved sampling devices shall be operated at the flowrate of 2.0 L/min if using a CMDPSU; at 2.2 L/min if using a CPDM; or at a different flowrate recommended by the manufacturer.

(b) If using a CMDPSU, each approved sampling device shall be examined each shift, by a person certified in sampling during:

(1) The second hour after being put into operation to assure it is in the proper location, operating properly, and at the proper flowrate. If the proper flowrate is not maintained, necessary adjustments shall be made by the certified person. This examination is not required if the sampling device is being operated in an anthracite coal

mine using the full box, open breast, or slant breast mining method.

(2) The last hour of operation to assure that the sampling device is operating properly and at the proper flowrate. If the proper flowrate is not maintained, the respirable dust sample shall be transmitted to MSHA with a notation by the certified person on the back of the dust data card stating that the proper flowrate was not maintained. Other events occurring during the collection of respirable dust samples that may affect the validity of the sample, such as dropping of the sampling head assembly onto the mine floor, shall be noted on the back of the dust data card.

(c) If using a CPDM, the person certified in sampling shall monitor the dust concentrations and the sampling status conditions being reported by the sampling device at mid-shift or more frequently as specified in the approved respirable dust control plan, if applicable, to assure: The sampling device is in the proper location and operating properly; and the work environment of the part 90 miner being sampled remains in compliance with the applicable standard at the end of the shift. This monitoring is not required if the sampling device is being operated in an anthracite coal mine using the full box, open breast, or slant breast mining method.

§ 90.206 Exercise of option or transfer sampling.

(a) The operator shall take five valid representative dust samples for each part 90 miner within 15 calendar days after:

(1) The 20-day period specified for each part 90 miner in § 90.100; and

(2) Implementing any transfer after the 20th calendar day following receipt of notification from MSHA that a part 90 miner is employed at the mine.

(b) Noncompliance with the applicable standard shall be determined in accordance with § 90.207(d) of this part.

(c) Upon issuance of a citation for a violation of the applicable standard, the operator shall comply with § 90.207(f) of this part.

§ 90.207 Quarterly sampling.

(a) Each operator shall take five valid representative samples every calendar quarter from the environment of each part 90 miner while performing normal work duties. Part 90 miner samples shall be collected on consecutive work days. The quarterly periods are:

- January 1–March 31
- April 1–June 30
- July 1–September 30
- October 1–December 31.

(b) When the respirable dust standard is changed in accordance with §90.101, the new applicable standard shall become effective 7 calendar days after the date of notification of the change by MSHA.

(c) When a valid representative sample taken in accordance with this section meets or exceeds the excessive concentration value (ECV) in Table 90–1 that corresponds to the applicable standard and particular sampling device used, the operator shall:

(1) Make approved respiratory equipment available to affected miners in accordance with §72.700 of this chapter;

(2) Immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the applicable standard; and

(3) Make a record of the corrective actions taken. The record shall be certified by the mine foreman or equivalent mine official, no later than the end of the mine foreman's or equivalent official's next regularly scheduled working shift. The record shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. Such records shall be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized representatives of the Secretary and the part 90 miner.

(d) Noncompliance with the applicable standard is demonstrated during the sampling period when:

(1) Two or more valid representative samples meet or exceed the ECV in Table 90–1 that corresponds to the applicable standard and the particular sampling device used; or

(2) The average for all valid representative samples meets or exceeds the ECV in Table 90–2 that corresponds to the applicable standard and the particular sampling device used.

(e) Unless otherwise directed by the District Manager, upon issuance of a citation for a violation of the applicable standard, paragraph (a) of this section shall not apply to that part 90 miner until the violation is abated and the citation is terminated in accordance with paragraphs (f) and (g) of this section.

(f) Upon issuance of a citation for a violation of the applicable standard, the operator shall take the following actions sequentially:

(1) Make approved respiratory equipment available to the affected part 90 miner in accordance with §72.700 of this chapter.

(2) Immediately take corrective action to lower the concentration of respirable dust to at or below the applicable standard. If the corrective action involves:

(i) Reducing the respirable dust levels in the work position of the part 90 miner identified in the citation, the operator shall implement the proposed corrective actions and begin sampling the affected miner within 8 calendar days after the date the citation is issued, until five valid representative samples are taken.

(ii) Transferring the part 90 miner to another work position at the mine to meet the applicable standard, the operator shall comply with §90.102 of this part and then sample the affected miner in accordance with §90.206(a) of this part.

(3) Make a record of the corrective actions taken. The record shall be certified by the mine foreman or equivalent mine official, no later than the end of the mine foreman's or equivalent official's next regularly scheduled working shift. The record shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. Such records shall be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized representatives of the Secretary and the part 90 miner.

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(g) A citation for a violation of the applicable standard shall be terminated by MSHA when the equivalent concentration of each of the five valid representative samples is at or below the applicable standard.

TABLE 90–1—EXCESSIVE CONCENTRATION VALUES (ECV) BASED ON SINGLE, FULL-SHIFT CMDPSU/CPDM CONCENTRATION MEASUREMENTS

Applicable standard (mg/m ³)	ECV (mg/m ³)	
	CMDPSU	CPDM
1.0	1.26	1.13
0.9	1.16	1.02
0.8	1.05	0.91
0.7	0.95	0.79
0.6	0.85	0.68
0.5	0.74	0.57
0.4	0.65	0.46
0.3	0.54	0.34
0.2	0.44	0.23

TABLE 90–2—EXCESSIVE CONCENTRATION VALUES (ECV) BASED ON THE AVERAGE OF 5 FULL-SHIFT CMDPSU/CPDM CONCENTRATION MEASUREMENTS

Applicable standard (mg/m ³)	ECV (mg/m ³)	
	CMDPSU	CPDM
1.0	1.12	1.06
0.9	1.02	0.96
0.8	0.92	0.85
0.7	0.81	0.75
0.6	0.71	0.64
0.5	0.61	0.53
0.4	0.51	0.43
0.3	0.41	0.32
0.2	0.31	0.22

§ 90.208 Respirable dust samples; transmission by operator.

(a) If using a CMDPSU, the operator shall transmit within 24 hours after the end of the sampling shift all samples collected to fulfill the requirements of this part, including control filters, in containers provided by the manufacturer of the filter cassette to: Respirable Dust Processing Laboratory, Pittsburgh Safety and Health Technology Center, 626 Cochran Mill Road, Building 38, Pittsburgh, PA 15236-3611, or to any other address designated by the District Manager.

(b) The operator shall not open or tamper with the seal of any filter cassette or alter the weight of any filter

cassette before or after it is used to fulfill the requirements of this part.

(c) A person certified in sampling shall properly complete the dust data card that is provided by the manufacturer for each filter cassette. The card shall have an identification number identical to that on the cassette used to take the sample and be submitted to MSHA with the sample. Each card shall be signed by the certified person who actually performed the required examinations under 90.205(b) of this part during the sampling shift and shall include that person’s MSHA Individual Identification Number (MIIN). Respirable dust samples with data cards not properly completed may be voided by MSHA.

(d) All respirable dust samples collected by the operator shall be considered taken to fulfill the sampling requirements of part 70, 71, or 90 of this title, unless the sample has been identified in writing by the operator to the District Manager, prior to the intended sampling shift, as a sample to be used for purposes other than required by part 70, 71, or 90 of this title.

(e) Respirable dust samples received by MSHA in excess of those required by this part shall be considered invalid samples.

(f) If using a CPDM, the person certified in sampling shall (1) validate, certify, and transmit electronically to MSHA within 24 hours after the end of each sampling shift all sample data file information collected and stored in the CPDM, including the sampling status conditions encountered when sampling each part 90 miner; and (2) not tamper with the CPDM or its components in any way before, during, or after it is used to fulfill the requirements of this part, or alter any data files. All CPDM data files transmitted electronically to MSHA shall be maintained by the operator for at least 12 months.

[79 FR 24988, May 1, 2014, as amended at 80 FR 52993, Sept. 2, 2015]

§ 90.209 Respirable dust samples; report to operator.

(a) MSHA shall provide the operator, as soon as practicable, a report with the following data on respirable dust samples submitted or whose results were transmitted electronically, if

using a CPDM, in accordance with this part:

- (1) The mine identification number;
- (2) The locations within the mine from which the samples were taken;
- (3) The concentration of respirable dust, expressed as an equivalent concentration for each valid sample;
- (4) The average equivalent concentration of respirable dust for all valid samples;
- (5) The occupation code;
- (6) The reason for voiding any sample; and
- (7) The part 90 miner's MSHA Individual Identification Number (MIIN).

(b) Upon receipt, the operator shall provide a copy of this report to the part 90 miner. The operator shall not post the original or a copy of this report on the mine bulletin board.

(c) If using a CPDM, the person certified in sampling shall print, sign, and provide to each part 90 miner, a paper record (Dust Data Card) of the sample run within one hour after the start of the part 90 miner's next work shift. This hard-copy record shall include the data entered when the sample run was first programmed, and the following:

- (1) The mine identification number;
- (2) The location within the mine from which the sample was taken;
- (3) The concentration of respirable dust, expressed as an equivalent concentration reported and stored for each sample;
- (4) The sampling status conditions encountered for each sample;
- (5) The shift length; and
- (6) The part 90 miner's MSHA Individual Identification Number (MIIN).

(d) The operator shall not post data on respirable dust samples for part 90 miners on the mine bulletin board.

§90.210 Status change reports.

If there is a change in the status of a part 90 miner (such as entering a terminated, injured, or ill status, or returning to work), the operator shall report the change in the status of the part 90 miner to the MSHA District Office or to any other MSHA office designated by the District Manager. Status changes shall be reported in writing or by electronic means within 3 working days after the status change has occurred.

Subpart D—Respirable Dust Control Plans

SOURCE: 79 FR 24993, May 1, 2014, unless otherwise noted.

§ 90.300 Respirable dust control plan; filing requirements.

(a) If an operator abates a violation of the applicable standard by reducing the respirable dust level in the position of the part 90 miner, the operator shall submit to the District Manager for approval a written respirable dust control plan for the part 90 miner in the position identified in the citation within 15 calendar days after the citation is terminated. The respirable dust control plan and revisions thereof shall be suitable to the conditions and the mining system of the coal mine and shall be adequate to continuously maintain respirable dust to at or below the applicable standard for that part 90 miner.

(b) Each respirable dust control plan shall include at least the following:

- (1) The mine identification number assigned by MSHA, the operator's name, mine name, mine address, and mine telephone number and the name, address and telephone number of the principal officer in charge of health and safety at the mine;
- (2) The name and MSHA Individual Identification Number of the part 90 miner and the position at the mine to which the plan applies;
- (3) A detailed description of the specific respirable dust control measures used to continuously maintain concentrations of respirable coal mine dust at or below the applicable standard; and
- (4) A detailed description of how each of the respirable dust control measures described in response to paragraph (b)(3) of this section will continue to be used by the operator, including at least the specific time, place, and manner the control measures will be used.

§ 90.301 Respirable dust control plan; approval by District Manager; copy to part 90 miner.

(a) The District Manager will approve respirable dust control plans on a mine-by-mine basis. When approving respirable dust control plans, the District Manager shall consider whether:

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(1) The respirable dust control measures would be likely to maintain concentrations of respirable coal mine dust at or below the applicable standard; and

(2) The operator's compliance with all provisions of the respirable dust control plan could be objectively ascertained by MSHA.

(b) MSHA may take respirable dust samples to determine whether the respirable dust control measures in the operator's plan effectively maintain concentrations of respirable coal mine dust at or below the applicable standard.

(c) The operator shall comply with all provisions of each respirable dust control plan upon notice from MSHA that the respirable dust control plan is approved.

(d) The operator shall provide a copy of the current respirable dust control plan required under this part to the part 90 miner. The operator shall not post the original or a copy of the plan on the mine bulletin board.

(e) The operator may review respirable dust control plans and submit proposed revisions to such plans to the District Manager for approval.