

respect to which such application is filed and the ability to reduce such dust to the level required to be maintained in such place under this section; a description of the ventilation system of the mine and its capacity; the quantity and velocity of air regularly reaching the working faces; the method of mining; the amount and pressure of the water, if any, reaching the working faces; the number, location, and type of sprays, if any; action taken to reduce such dust; and such other information as the Panel may require; and

(3) statements by the applicant and the engineer conducting such survey, of the means and methods to be employed to achieve compliance with the applicable standard, the progress made toward achieving compliance, and an estimate of when compliance can be achieved.

(d) Promulgation of new standards; procedures

Beginning six months after the operative date of this subchapter and from time to time thereafter, the Secretary of Health and Human Services shall establish, in accordance with the provisions of section 811 of this title, a schedule reducing the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings is exposed below the levels established in this section to a level of personal exposure which will prevent new incidences of respiratory disease and the further development of such disease in any person. Such schedule shall specify the minimum time necessary to achieve such levels taking into consideration present and future advancements in technology to reach these levels.

(e) Concentration of respirable dust

References to concentrations of respirable dust in this subchapter mean the average concentration of respirable dust measured with a device approved by the Secretary and the Secretary of Health and Human Services.

(f) Average concentration

For the purpose of this subchapter, the term "average concentration" means a determination which accurately represents the atmospheric conditions with regard to respirable dust to which each miner in the active workings of a mine is exposed (1) as measured, during the 18 month period following December 30, 1969, over a number of continuous production shifts to be determined by the Secretary and the Secretary of Health and Human Services, and (2) as measured thereafter, over a single shift only, unless the Secretary and the Secretary of Health and Human Services find, in accordance with the provisions of section 811 of this title, that such single shift measurement will not, after applying valid statistical techniques to such measurement, accurately represent such atmospheric conditions during such shift.

(g) Compliance inspections

The Secretary shall cause to be made such frequent spot inspections as he deems appropriate of the active workings of coal mines for the purpose of obtaining compliance with the provisions of this subchapter.

(h) Maintenance of respiratory equipment; substitutes for environmental controls

Respiratory equipment approved by the Secretary and the Secretary of Health and Human Services shall be made available to all persons whenever exposed to concentrations of respirable dust in excess of the levels required to be maintained under this chapter. Use of respirators shall not be substituted for environmental control measures in the active workings. Each operator shall maintain a supply of respiratory equipment adequate to deal with occurrences of concentrations of respirable dust in the mine atmosphere in excess of the levels required to be maintained under this chapter.

(Pub. L. 91-173, title II, §202, Dec. 30, 1969, 83 Stat. 760; Pub. L. 95-164, title II, §202(a), Nov. 9, 1977, 91 Stat. 1317; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to in subsecs. (b)(1) and (d), see section 509 of Pub. L. 91-173, set out as a note under section 801 of this title.

This chapter, referred to in subsec. (h), was in the original "this Act", meaning Pub. L. 91-173, Dec. 30, 1969, 83 Stat. 742, known as the Federal Mine Safety and Health Act of 1977, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

AMENDMENTS

1977—Subsec. (e). Pub. L. 95-164 substituted a general reference to an "approved device" used to measure the average concentration of respirable dust for provisions which had referred to a specific device known as an "MRE instrument".

CHANGE OF NAME

"Secretary of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" in subsecs. (a), (d) to (f), and (h) pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-164 effective Nov. 9, 1977, see section 307 of Pub. L. 95-164, set out as a note under section 801 of this title.

§ 843. Medical examinations

(a) Chest roentgenogram; availability; periodic intervals; other tests; transmittal of results; advice of rights

The operator of a coal mine shall cooperate with the Secretary of Health and Human Services in making available to each miner working in a coal mine the opportunity to have a chest roentgenogram within eighteen months after December 30, 1969, a second chest roentgenogram within three years thereafter, and subsequent chest roentgenograms at such intervals thereafter of not to exceed five years as the Secretary of Health and Human Services prescribes. Each worker who begins work in a coal mine for the first time shall be given, as soon as possible after commencement of his employment, and again three years later if he is still engaged in coal mining, a chest roentgenogram; and in the event the second such chest roentgenogram shows evidence of the development of pneumo-

coniosis the worker shall be given, two years later if he is still engaged in coal mining, an additional chest roentgenogram. All chest roentgenograms shall be given in accordance with specifications prescribed by the Secretary of Health and Human Services and shall be supplemented by such other tests as the Secretary of Health and Human Services deems necessary. The films shall be read and classified in a manner to be prescribed by the Secretary of Health and Human Services, and the results of each reading on each such person and of such tests shall be submitted to the Secretary and to the Secretary of Health and Human Services, and, at the request of the miner, to his physician. The Secretary shall also submit such results to such miner and advise him of his rights under this chapter related thereto. Such specifications, readings, classifications, and tests shall, to the greatest degree possible, be uniform for all coal mines and miners in such mines.

(b) Evidence of pneumoconiosis; option to transfer; wages

(1) On and after the operative date of this subchapter, any miner who, in the judgment of the Secretary of Health and Human Services based upon such reading or other medical examinations, shows evidence of the development of pneumoconiosis shall be afforded the option of transferring from his position to another position in any area of the mine, for such period or periods as may be necessary to prevent further development of such disease, where the concentration of respirable dust in the mine atmosphere is not more than 2.0 milligrams of dust per cubic meter of air.

(2) Effective three years after December 30, 1969, any miner who, in the judgment of the Secretary of Health and Human Services based upon such reading or other medical examinations, shows evidence of the development of pneumoconiosis shall be afforded the option of transferring from his position to another position in any area of the mine, for such period or periods as may be necessary to prevent further development of such disease, where the concentration of respirable dust in the mine atmosphere is not more than 1.0 milligrams¹ of dust per cubic meter of air, or if such level is not attainable in such mine, to a position in such mine where the concentration of respirable dust is the lowest attainable below 2.0 milligrams per cubic meter of air.

(3) Any miner so transferred shall receive compensation for such work at not less than the regular rate of pay received by him immediately prior to his transfer.

(c) Costs of examinations and tests

No payment may be required of any miner in connection with any examination or test given him pursuant to this subchapter. Where such examinations or tests cannot be given, due to the lack of adequate medical or other necessary facilities or personnel, in the locality where the miner resides, arrangements shall be made to have them conducted, in accordance with the provisions of this subchapter, in such locality by the Secretary of Health and Human Services, or

by an appropriate person, agency, or institution, public or private, under an agreement or arrangement between the Secretary of Health and Human Services and such person, agency, or institution. The operator of the mine shall reimburse the Secretary of Health and Human Services, or such person, agency, or institution, as the case may be, for the cost of conducting each examination or test made, in accordance with this subchapter, and shall pay whatever other costs are necessary to enable the miner to take such examinations or tests.

(d) Autopsies

If the death of any active miner occurs in any coal mine, or if the death of any active or inactive miner occurs in any other place, the Secretary of Health and Human Services is authorized to provide for an autopsy to be performed on such miner, with the consent of his surviving widow or, if he has no such widow, then with the consent of his surviving next of kin. The results of such autopsy shall be submitted to the Secretary of Health and Human Services and, with the consent of such survivor, to the miner's physician or other interested person. Such autopsy shall be paid for by the Secretary of Health and Human Services.

(Pub. L. 91-173, title II, §203, Dec. 30, 1969, 83 Stat. 763; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 91-173, Dec. 30, 1969, 83 Stat. 742, known as the Federal Mine Safety and Health Act of 1977, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

For operative date of this subchapter, referred to in subsec. (b)(1), see section 509 of Pub. L. 91-173, set out as an Effective Date note under section 801 of this title.

CHANGE OF NAME

"Secretary of Health and Human Services" substituted in text for "Secretary of Health, Education, and Welfare" pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

§ 844. Rock dust and gas hazards; controls

The dust resulting from drilling in rock shall be controlled by the use of permissible dust collectors, or by water or water with a wetting agent, or by ventilation, or by any other method or device approved by the Secretary which is at least as effective in controlling such dust. Respiratory equipment approved by the Secretary and the Secretary of Health and Human Services shall be provided persons exposed for short periods to inhalation hazards from gas, dusts, fumes, or mist. When the exposure is for prolonged periods, other measures to protect such persons or to reduce the hazard shall be taken.

(Pub. L. 91-173, title II, §204, Dec. 30, 1969, 83 Stat. 764; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

CHANGE OF NAME

"Secretary of Health and Human Services" substituted in text for "Secretary of Health, Education,

¹ So in original. Probably should be "milligrams".