

(1) Where, in the judgment of the Secretary, due to the lack of adequate medical or other necessary facilities or personnel at the mine or in the locality where the miner resides, the required roentgenographic examination cannot be given.

(2) Where the operator has not submitted an approvable plan.

(3) Where, after commencement of an operator's program pursuant to an approved plan and after notice to the operator of his failure to follow the approved plan and, after allowing 15 calendar days to bring the program into compliance, the Secretary determines and notifies the operator in writing that the operator's program still fails to comply with the approved plan.

(b) The operator of the mine shall reimburse the Secretary or other person, agency, or institution as the Secretary may direct, for the cost of conducting each examination made in accordance with this section.

(c) All examinations given or arranged by the Secretary will comply with the time requirements of § 37.3. Whenever the Secretary gives or arranges for the examinations of miners at a time, a written notice of the arrangements will be sent to the operator who shall post the notice on the mine bulletin board.

(d) Operators of mines selected by NIOSH to participate in the National Study of Coal Workers' Pneumoconiosis (an epidemiological study of respiratory diseases in coal miners) and who agree to cooperate will have all their miners afforded the opportunity to have a chest radiograph required hereunder at no cost to the operator. For future examinations and for mandatory examinations each participating operator must submit an approvable plan.

[43 FR 33715, Aug. 1, 1978, as amended at 77 FR 56728, Sept. 13, 2012]

§ 37.7 Transfer of affected miner to less dusty area.

(a) Any miner who, in the judgment of the Secretary based upon the interpretation of one or more of the miner's chest radiographs, shows category 1 ($\frac{1}{6}$, $\frac{1}{4}$, $\frac{1}{2}$), category 2 ($\frac{2}{1}$, $\frac{2}{2}$, $\frac{2}{3}$), or category 3 ($\frac{3}{2}$, $\frac{3}{3}$, $\frac{3}{4}$) simple pneumoconioses, or complicated

pneumoconioses (ILO Classification) must be afforded the option of transferring from his or her position to another position in an area of the mine where the concentration of respirable dust in the mine atmosphere is in compliance with the MSHA requirements in 30 CFR 90.3.

(b) Any transfer under this section shall be in accordance with the procedures specified in part 90 of title 30, Code of Federal Regulations.

[43 FR 33715, Aug. 1, 1978; 43 FR 38830, Aug. 31, 1978, as amended at 44 FR 23085, Apr. 18, 1979; 49 FR 7563, Mar. 1, 1984; 77 FR 56728, Sept. 13, 2012]

§ 37.8 Radiographic examination at miner's expense.

Any miner who wishes to obtain an examination at the miner's own expense at an approved facility and to have the complete examination submitted to NIOSH may do so, provided that the examination is made no sooner than 6 months after the most recent examination of the miner submitted to NIOSH. NIOSH will provide an interpretation and report of the examinations made at the miner's expense in the same manner as if it were submitted under an operator's plan. Any change in the miner's transfer rights under the Act that may result from this examination will be subject to the terms of § 37.7.

[77 FR 56728, Sept. 13, 2012]

§ 37.10 Standards incorporated by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, NIOSH must publish notice of change in the FEDERAL REGISTER and the material must be available to the public. All approved material is available for inspection at NIOSH, Division of Respiratory Disease Studies, 1095 Willowdale Road, Morgantown, WV 26505. To arrange for an inspection at NIOSH, call 304-285-5749. Copies are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at