

notice of the occupation and, if applicable, the mechanized mining unit to which the Part 90 miner will be assigned on the twenty-first calendar day following receipt of the notification from MSHA.

(c) After the twentieth 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 (Part 90 option; notice of eligibility; exercise of option).

(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) 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.

(d) In addition to the compensation required to be paid under paragraphs (a), (b) and (c) 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.

(e) 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 (Part 90 option; notice of eligibility; exercise of option), 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.

(f) If a Part 90 miner is transferred, and the Secretary subsequently noti-

fies 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), (c) and (d) 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 (Part 90 option; notice of eligibility; exercise of option) 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 1.0 milligrams per cubic meter of air or the respirable dust standard established by

§ 90.101 (Respirable dust standard when quartz is present); 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 average respirable dust concentration in his or her present position exceeds 1.0 milligrams per cubic meter of air or the respirable dust standard established by § 90.101 (Respirable dust standard when quartz is present).

(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.

EFFECTIVE DATE NOTE: At 79 FR 24989, May 1, 2014, Subpart B to part 90 was revised, effective Aug. 1, 2014. For the convenience of the user, the revised text is set forth as follows:

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

**§ 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:

- (a) 1.0 milligrams of respirable dust per cubic meter of air (mg/m<sup>3</sup>).
- (b) 0.5 mg/m<sup>3</sup> 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<sup>3</sup> (100 micrograms per cubic meter or µg/m<sup>3</sup>) 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 µg/m<sup>3</sup> 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<sup>3</sup> dust standard. Suppose a valid representative dust sample with an equivalent concentration of 0.50 mg/m<sup>3</sup> contains 25.6% of quartz dust, which corresponds to a quartz concentration of 128 µg/m<sup>3</sup>. 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<sup>3</sup> (10/25.6% = 0.4 mg/m<sup>3</sup>).

**§ 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 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**

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

**§90.201 Sampling; general requirements.**

(a) Each operator shall take respirable dust samples of the concentration of respirable dust in the active workings of the mine as required by this part with a sampling device approved by the Secretary and the Secretary of Health and Human Services under part 74 (Coal Mine Dust Personal Sampler Units) of this title.

(b) Sampling devices shall be worn or carried directly to and from each part 90 miner's position, and shall remain operational during the entire shift or for 8 hours, whichever time is less.

(c) Upon request from the District Manager, the operator shall submit the date on which collecting any respirable dust samples required by this part will begin.