

Part 90

Educational Information

What is Part 90?

- Part 90, is a regulation aimed at protecting coal miners who have been diagnosed with black lung.
- A miner who participates in Part 90 has the right to be transferred to a low dust environment, without having their pay reduced, and have protections against discrimination, including termination.

Part 90 Eligibility

- All miners are entitled to medical surveillance in accordance with National Institute for Occupational Safety and Health (NIOSH) approved Medical Examination Plans as posted on the mine bulletin board.
- NIOSH established standards for testing and evaluation of medical data.
- NIOSH reviews submitted medical testing information, determines eligibility for protection under Part 90, and notifies the miner by letter.
- If NIOSH evaluation confirms eligibility, the miner has the option to exercise their rights under Part 90 at any time.

Medical Surveillance

[see 30 CFR 72.100 (a)]

- Applies to all miners at surface and underground coal mines including facilities such as loadouts and preparation plants.
- Operator must provide the medical examinations at no cost to the miner through examination plans approved by NIOSH.
- Examinations include chest x-rays, spirometry, symptom assessment, and occupational history.

Miner Notification

- After interpretation of a miner's chest x-ray, NIOSH, informs the miner of eligibility.
- If the interpretation reveals evidence of pneumoconiosis:
 - the miner also receives a form that is to be used to exercise the option to work in a low dust area of a mine and a notification of his or her privacy rights.
 - Neither MSHA or the mine operator are informed of this medical evidence until a miner exercises Part 90 rights.

Miner Notification (continued)

- If the NIOSH interpretation of a miner's chest x-ray, does NOT show sufficient evidence of pneumoconiosis:
 - NIOSH notifies the miner of the findings.
 - NIOSH does not provide this notification to MSHA.
- At his or her own expense, a coal miner may be examined at a 'NIOSH-approved facility that will submit the medical information to NIOSH.
 - NIOSH will evaluate the x-ray in the same manner as if it were submitted under the operator's plan.
 - If the findings from the approved facility show evidence of the development of pneumoconiosis, the miner will be notified of the right to exercise the Part 90 option.

Exercising the Part 90 Option

- When an eligible coal miner receives an exercise of Part 90 option form, only that miner can exercise his or her Part 90 option.
- If the miner is exercising the option for the first time, this is accomplished by the miner signing, dating, and mailing the form in the preaddressed envelope to:

Chief, Division of Health, Coal Mine Safety and Health,
201 12th Street South - Suite 400,
Arlington, VA 22202-5452

Exercising the Part 90 Option

(continued)

- The eligible miner is under no time limit as to when he or she can exercise the Part 90 option.
- However, the mine operator has no obligation under Part 90 until MSHA receives an exercise of option form from the miner and then notifies the mine operator.

Privacy of Part 90 Miner Information

- All medical findings resulting from participation in the periodic medical examination program are kept confidential by NIOSH and MSHA.
- However, when a miner exercises his or her rights under Part 90 by signing and dating the option form provided by NIOSH, MSHA informs the operator that the miner is a "Part 90 miner" and is entitled to protection under the rule.
- Medical findings are confidential information, and mine operators are prohibited from requiring any miner to disclose his or her medical information.

Privacy of Part 90 Miner Information (continued)

- A mine operator should keep all records identifying Part 90 miners secure and confidential, in locked files.
- These records include, but are not limited to:
 - All Part 90 miner messages and input forms and all Part 90 correspondence between the miner, operator and MSHA,
 - The operator's Part 90 dust control plans,
 - All information resulting from inspections and investigations that identifies a Part 90 miner.

Part 90 Dust Standard

- Part 90 provides a miner, who has evidence of the development of pneumoconiosis and has exercised the Part 90 option, with greater protection from respirable coal mine dust.
- Part 90 miner dust exposure must be at or below 0.5 mg/m^3 or the standard established when quartz is present (referred to as the "applicable respirable dust standard" or "applicable standard") as measured with a Continuous Personal Dust Monitor (CPDM).

Grace Period (20 Calendar Days)

- When an operator receives written notice from MSHA that a miner at the mine exercised the Part 90 option, the operator is provided a 20 calendar-day grace period to provide MSHA the miner's occupation and information about the miner's work assignment at the mine.
- During the 20-day grace period, the mine operator must give the District Manager written notification of the occupation and, if applicable, the mechanized mining unit to which the Part 90 miner will be assigned on the 21st calendar day.

Transfer of Part 90 Miner

- Part 90 defines a transfer as any change in the work assignment of a Part 90 miner by the operator and includes
 - Any change in occupation code of a Part 90 miner;
 - Any movement of a Part 90 miner to or from an MMU;
 - Any assignment of a Part 90 miner to the same occupation in a different location at a mine.

Transfer of Part 90 Miner (continued)

■ Transfer Protection

- **Shift Protection** - If, at any time, a Part 90 miner is transferred in order to meet the applicable respirable dust standard, the operator is restricted in the positions to which the Part 90 miner may be assigned. Except as provided in transfers by written agreement described below, the Part 90 miner must be transferred 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.

Transfer of Part 90 Miner (continued)

■ Transfer Protection

- Written Agreement If, at any time, a Part 90 miner is transferred in order to meet the applicable respirable dust standard, the mine operator may assign the Part 90 miner to a different coal mine (either surface or an underground coal mine), a newly-created position, or a position on a different shift or shift rotation only if the miner agrees in writing to a transfer of this nature.
- It is important to note that any Part 90 miner who is transferred to another position by the operator remains a Part 90 miner at the new position, whether at an underground or surface mine.

Transfer of Part 90 Miner (continued)

■ Transfer Protection

- Transfer After Grace Period - Part 90 requires that after the 20-day grace period, the mine operator shall notify the District Manager in writing before any transfer of a Part 90 miner occurs. This notification must include the scheduled date of transfer.

Part 90 Miner Compensation

- A Part 90 miner is compensated at not less than the regular rate of pay received by that miner immediately before exercising the option, regardless of any transfer.
- A Part 90 miner must receive any future wage increases applicable to the position.

Sampling Part 90 Miner

- Exercise of Option or Transfer Sampling (Five Valid Samples - 15 days)
 - The operator must collect five valid representative samples for the Part 90 miner while he or she is performing normal work duties during the 15 calendar days after the 20-day grace period for the following events:
 - A miner at the mine exercised the Part 90 option, and
 - After a transfer of a Part 90 miner
 - MSHA will not sample that Part 90 miner during the 20-day grace period.

Sampling Part 90 Miner (continued)

- Quarterly Sampling (Five Valid Samples)
 - 5 samples each quarter
 - Consecutive workdays
 - Reduced standard due to quartz
 - Standard effective 7 days after date of notification
- Sampling is to ensure the Part 90 miner remains in compliance with the lower dust standard, and non-compliance will result in enforcement action and required corrective measures.

Part 90 Samples - Compliance

- All 5 samples \leq applicable standard – Repeat sampling each quarter
- 1 sample \geq Excessive Concentration Value (ECV)
 - Make respirators available
 - Immediately take corrective action to lower to or below applicable standard
 - Make record of corrective action
 - Certify by mine foreman or equivalent
 - In secure book
 - Maintained at mine for at least 1 year

Part 90 Samples - Noncompliance

- 2 or more samples or the average of all samples collected during a sampling period \geq the Excessive Concentration Value .
 - Correction actions as required for a single sample exceeding the applicable standard.
 - Citation is issued for excessive dust.
 - Citation terminated when the equivalent concentration of each of 5 valid samples are \leq applicable standard.

Part 90 Miner Dust Control Plan

■ Dust Control Plan

- If the mine operator abates a violation of the applicable respirable dust standard in the environment of a Part 90 miner by implementing additional dust control measures at the Part 90 miner's work position, the operator must submit a written respirable dust control plan for that miner to the District Manager for approval within 15 days after the citation is terminated.
- Mine operators are required to provide a copy of the Part 90 miner dust control plan to the affected miner, but the operator is prohibited from posting this plan on the mine bulletin board.

Part 90 Miner Dust Control Plan

(continued)

■ Dust Control Plan Content

- The plan must include specific details on the control measures that were implemented to reduce the respirable dust and abate the violation, and the specific time, place and manner that the control measures will be used to continuously maintain compliance with the standard.

■ No Plan Required

- If the mine operator abates a violation of the applicable respirable dust standard by transferring the Part 90 miner to another position that complies with the applicable standard, the operator is not required to submit a dust control plan to the District Manager for approval.

Part 90 Miner – Sample Results

- The operator is required to provide the Part 90 miner with a paper record of the previous day's sample results.
- The operator must provide the sampled Part 90 miner a copy of the MSHA Report of Operator Sampling Results.
- The operator is prohibited from posting sampling results provided to the Part 90 miner.

Report of Status Changes

- The operator must report change in status of a Part 90 miner to MSHA within 3 working days after the change in status has occurred.
- Miner Declines Option or Waives Rights
 - Miner's Part 90 rights can be re-established at any time while employed at a coal mine.
- Miner Terminated
 - If miner is employed at a coal mine in future, he/she can submit request to re-exercise the Part 90 option.

Waiver of Part 90 Option

- A Part 90 miner may waive his or her Part 90 rights by
 - Giving written notification to the Chief, Division of Health, Coal Mine Safety and Health;
 - Applying for and accepting a position in an area of a mine which the miner knows has an average respirable dust concentration exceeding 0.5 milligrams per cubic meter of air or exceeding a reduced standard due to the presence of quartz; or
 - Refusing to accept another position at the same coal mine which meets the requirements of 30 CFR 90, Sections 90.100, 90.101 and 90.102(a) when sample results show that the applicable dust standard is exceeded in his or her current position.

Waiver of Part 90 Option (Continued)

- When a miner does waive Part 90 rights, protection under Part 90 terminates until the miner re-exercises the option. There is no limit on the number of times a Part 90 miner may waive his or her rights. Once these rights are waived, the miner may re-exercise the option at any time, as long as he or she is employed at any coal mine.
- The inspector shall establish facts through reviewing position bidding documents, company records, and through discussions with the Part 90 miner and operator to ensure that the Part 90 miner was not coerced into making the decision to waive their rights under 30 CFR Part 90.