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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.

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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).

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

Subpart A—General

§ 90.1 Scope.

This Part 90 establishes the option of miners who are employed at underground coal mines or at surface work areas of underground 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 1.0 milligrams per cubic meter of air. 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 supercedes section 203(b) of the Act.

§ 90.2 Definitions.

For the purpose of this Part 90, the term:

Act means the Federal Mine Safety and Health Act of 1977, Pub. L. 95-173, as amended by Pub. L. 95-164.

Active workings means any place at a coal mine where miners are normally required to work or travel.

Certified person means an individual certified by the Secretary in accordance with § 90.202 (Certified person; sampling) to take respirable dust samples required by this part or certified in accordance with § 90.203 (Certified person; maintenance and calibration)

to perform the maintenance and calibration of respirable dust sampling equipment as required by this part.

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

District Manager means the manager of the Coal Mine Safety and Health District in which the mine is located.

Mechanized mining unit means: (1) A unit of mining equipment including hand loading equipment used for the production of material; or (2) a specialized unit which utilizes mining equipment other than specified in § 70.207(e) (Bimonthly sampling; mechanized mining unit).

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

MSHA means the Mine Safety and Health Administration of the Department of Labor.

Normal work duties means 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 means a miner employed at an underground coal mine or at a surface work area of an underground coal mine who has exercised the option under the old section 203(b) program (36 FR 20601, October 27, 1971), or under § 90.3 (Part 90 option; notice of eligibility; exercise of option) 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 1.0 milligrams per cubic meter of air, and who has not waived these rights.

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

Respirable dust means dust collected with a sampling device approved by the Secretary and the Secretary of Health and Human Services in accordance with part 74 (Coal Mine Dust Personal Sampler Units) of this title. Sampling device approvals issued by the Secretary of the Interior and Secretary of

Health, Education, and Welfare are continued in effect.

Secretary means the Secretary of Labor or a delegate.

Secretary of Health and Human Services means Secretary of Health and Human Services or Secretary of Health, Education, and Welfare.

Surface work area of an underground coal mine means the surface areas of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, excavations, and other property, real or personal, placed upon or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting bituminous coal, lignite, or anthracite from its natural deposits underground by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities;

Transfer means 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 a mechanized mining unit; or (3) any assignment of a Part 90 miner to the same occupation in a different location at a mine.

Underground coal mine means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person, used in, or to be used in, or resulting from the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted.

Valid respirable dust sample means a respirable dust sample collected and submitted as required by this part, and not voided by MSHA.

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

(a) Any miner employed at an underground coal mine or at a surface work area of an underground coal mine who, in the judgment of the Secretary of Health and Human Services, has evidence of the development of pneumoconiosis based on a chest X-ray, read