

VOLUME III - 30 CFR PARTS 40 THROUGH 50, PART 62 AND PART 100  
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INTERPRETATION, APPLICATION AND GUIDELINES  
ON ENFORCEMENT OF 30 CFR

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INTERPRETATION, APPLICATION, AND GUIDELINES  
ON ENFORCEMENT OF 30 CFR.

PART 41                    NOTIFICATION OF LEGAL IDENTITY

III.41-1                    Assignment of Independent Contractor and  
                                 Mine Identification Numbers

These are general guidelines for the assignment of new identification numbers and will apply to the majority of operations. Individual circumstances may arise where district personnel will have to decide on a case-by-case basis whether operations are related or independent for the purpose of assigning identification numbers.

When assigning a new mine identification number, a check should be made to ensure that the number is being assigned to a new mine and not an existing mine that has only undergone a change of ownership, name, or status.

Preparation or milling plants that receive material from only one underground or surface mine, and are located on the same property as that mine, shall share the mine's identification number and shall not be assigned a separate number. Preparation or milling plants that share mine property with a surface or underground mine, but process material from other mines, are to be given separate identification numbers. Preparation or milling plants that are not located on the same property as a surface or underground mine are considered to be centrally located facilities and are to have separate identification numbers.

Each underground mine and each surface mine shall have separate identification numbers. However, a new mine identification number must not be assigned to a mine going from surface to underground mining, or vice versa.

For independent contractors: The last paragraph of Section 45.3 of this volume stipulates that "Each independent contractor who has an identification number uses it on all job sites." This means that each independent contractor is assigned only one identification number to be used on any and all job sites.

III.41-2                    Portable Operations

When a mine operator has a portable plant which operates in several different locations, the mine identification number is to be assigned to the plant only and not to the pit. Mine operators will need to submit only one legal identification form for each portable plant. Quarterly employment information will be reported on one Form 7000-2, regardless of the number of pits the plant may operate during the quarter. For administrative purposes, the portable plant will be given one permanent mine name (for example, ABC Plant #1) even though it might be operating in different locations during the course of the year. The operator will use the home office address on the legal identification form. This will be the address for all MSHA-related correspondence.

Consistent with other surface mining entities, the portable plant will receive inspections in accordance with the statutory schedule. Such inspections are expected to occur at locations where the portable plant is functioning.

Metal and nonmetal operators of portable plants should be reminded that 30 CFR 56.1000 requires notification to MSHA when a move is made from one pit to another. Since a number of the portable plants may move from the jurisdiction of one MSHA field office, subdistrict or district to another, it is important that MSHA personnel keep the receiving office advised of the location of the plant.

42.10 Tuition Fees

The Academy will charge tuition fees to all persons attending Academy courses except employees of Federal, State, or local governments and persons attending the Academy under a program supported through an MSHA state grant.

42.50 Charges for Room and Board

The Academy will charge room and board to all persons staying at the Academy except MSHA personnel, other personnel performing a direct service for MSHA, and persons attending the Academy under a program supported through an MSHA state grant.

Fees may be waived for government and other organizations with direct involvement in mine health and safety. MSHA will waive tuition fees and room and board charges for up to 10 days per calendar year for mine rescue team members participating in team training activities at the Academy. The waiver is available only for team training activities. Waivers are not available for events such as local contests or rule interpretation meetings attended by mine rescue teams. Requests for waiver of fees and/or room and board charges must be made in advance and in writing.

Requests for group waivers will be approved by the Director of Educational Policy and Development and should be addressed to:

Director of Educational Policy and Development  
Mine Safety and Health Administration  
1100 Wilson Boulevard  
Arlington, VA 22209-3939

Requests for individual waivers will be approved by the Superintendent of the Academy and should be addressed to:

Superintendent  
National Mine Health and Safety Academy  
1301 Airport Road  
Beaver, WV 25813-9426

Persons staying at the Academy may have their spouses and immediate family as guests providing all appropriate fees are paid upon arrival. All guests are expected to obey Federal and Academy rules concerning use of Federal facilities and safety and health precautions. Children 12 years and under must be

accompanied by an adult at all times. Advance reservations are required. MSHA's need for dormitory rooms will always take precedence over guest occupancy even when advance reservations have been made. However, the Academy will strive to provide prior notice of a room shortage and assist, if feasible, in making alternate arrangements.

The fee schedule for lodging is recalculated each year and is based on MSHA's actual costs for housekeeping, maid services, laundry, security, recreation, utilities, maintenance, registration, and direct staff support. The current fee schedule may be obtained by calling (304) 256-3280.

Charges for guest accommodations will be determined based on the following:

Guests of MSHA Temporary Residents

When the temporary resident's room is paid by the Agency, adult guests and children over 12 will be charged the difference between the single and double rate. Children 12 and under stay at no cost.

Guests of Non-MSHA Temporary Residents

Temporary residents will be charged the double room rate when they share the room with an adult guest or child over 12 years. Children 12 years and under stay at no cost. All students wishing to reserve a separate dormitory room for a guest at the Academy must prepay the charge for the guest's first night.

The deposit for the first night will be retained if the guest does not arrive. If the Academy is notified in time for the room to be filled, the deposit will not be retained. The deposit will be returned in full if due to an Agency exigency, MSHA cancels the program or class.

Educational Policy and Development (EPD) gives first priority for use of all facilities at the Academy to mission-related, MSHA sponsored activities. The Academy will continue to permit other organizations who meet Agency guidelines to use the Academy meeting and residence facilities during times not reserved by priority clients. Every effort will be made to accommodate all parties. However, if an MSHA organization notifies the Academy of its desire to use meeting and residence facilities more than 60 days in advance, and that request

conflicts with an existing non-MSHA sponsored group's reservation, EPD will require non-MSHA parties to relinquish meeting and residence space sufficient to accommodate MSHA's needs. When this occurs, outside accommodations will not be paid for by EPD.

In addition, the Academy will set aside a limited number of dormitory rooms on a continuous basis for exclusive use of MSHA personnel who are attending emergency meetings, or who are traveling to the Academy on other types of official business. If the number of rooms available is insufficient, MSHA personnel will be required to find outside accommodations. Outside accommodations will not be paid for by EPD. Unless otherwise notified, meeting facilities will remain available at the Academy.

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**PART 43**                    **PROCEDURES FOR PROCESSING HAZARDOUS CONDITIONS**  
**COMPLAINTS**

III.43-1                    Processing Hazardous Conditions Complaints

Section 103(g) (1) of the Mine Act stipulates procedures and requirements for a representative of the miners, or a miner, to request an immediate inspection of a mine if there are reasonable grounds to believe that a violation of a mandatory standard or an imminent danger exists in the mine. Under Section 103(g) (1), the notice must be in writing, signed by the representative of miners, or a miner, and a copy must be given to the operator by MSHA in a manner that withholds the identity of the person giving, or involved in, the notice. MSHA instructions and regulations, under 30 CFR Part 43, exist for responding to such notices received under Section 103(g) (1), or by code-a-phone messages. These instructions and regulations also address MSHA response to a notice of alleged violation or imminent danger given under Section 103(g)(2). These requests or notices have normally been investigated and handled in an expeditious manner.

A different situation exists when an inspector receives information about violations or hazards in a mine, and the information is given in an informal manner that does not meet the requirements of Sections 103(g) (1) or 103(g) (2) in that the notice is not in writing. In these situations, the inspector receiving the information must evaluate and determine a course of action, which in some cases may result in an immediate inspection, but in other cases may not.

Inspectors should be willing to listen to all interested parties alleging violations, imminent dangers or hazards. Otherwise, the trust and cooperation that are the foundation of an effective safety effort will not be maintained. Depending upon the circumstances, the inspector may make an immediate inspection, or may incorporate the area or practices into his or her inspection schedule for attention at a later date. Likewise, the inspector may determine that the area in question has been inspected since the alleged occurrence and, consequently, the situation does not warrant further investigation. Any subsequent action by an inspector on information received outside the context of Section 103(g) should not be considered a 103(g) inspection; therefore, the procedures of Part 43 would not apply.

Information received about violations or hazardous conditions should be brought to the attention of the mine operator without disclosing the identity of the person(s) providing the information.

Furthermore, any written notification of an alleged violation or of an imminent danger received from a miner at a mine shall receive the same consideration and attention as that of a notification received from a representative of miners.

If a 103(g) complaint is received, and if it is determined that a special inspection is not warranted, a written notice of such determination shall be issued as soon as possible to the representative of the miner(s) or to the complainant.

If a special inspection is conducted, the MSHA inspector will notify the operator of the complaint pursuant to 30 CFR 43.4(c), but the inspector must not divulge to the operator the name of the complainant or the names of any individuals referred to in the complaint.

If the inspector finds that the alleged violation or danger exists, he or she shall issue the proper citation(s) or order(s). However, if, before leaving the mine, the inspector finds that no violation(s) or imminent danger connected with the complaint exists, he/she shall verbally convey this finding both to appropriate company and union officials. In addition, upon completion of a 103(g)(1) inspection in which a negative finding of violation is made, the inspector shall provide written notification of that fact to the operator and to the representative of miners or to the miner, before the inspector leaves the mine property. This notification will be written in longhand on the appropriate MSHA form. Any violation observed that does not specifically relate to the complaint shall be so identified in the investigation report.

Where the representative of miners or the miner invokes the procedures in Part 43, but disagrees with the inspector's conclusion(s), including, for example, the inspector's failure to issue an "unwarrantable" citation or order, the review procedures in Section 43.7 may be utilized.

43.7 Informal Review

Where a written complaint under Section 103(g) of the Act has been submitted to MSHA, and the authorized representative refuses to issue a citation with respect to the alleged violation or imminent danger, the representative of miners or the miner may obtain review of the refusal in accordance with the procedures outlined in 30 CFR Section 43.7(b).

This informal review procedure also applies to complaints by representatives of miners or miners for failure on the part of the authorized representative to issue a 104(d) "unwarrantable" citation or order, even though a 104(a) citation or order was issued.

After receipt of the written request for review, the district manager will follow the procedures in 30 CFR 43.7(c) and (d). The district manager's determination in the matter shall be final.

**PART 45**                    **INDEPENDENT CONTRACTORS****III.45-1**                    **General Enforcement Policy for Independent Contractors**

MSHA's policy is to issue citations and, where appropriate, orders to independent contractors for violations of applicable provisions of the Act, standards or regulations. This policy is based on the Mine Act's definition of an "operator," which includes "independent contractors performing services or construction" at mines.

MSHA's enforcement policy regarding independent contractors does not change production-operators' basic compliance responsibilities. Production-operators are subject to all provisions of the Act, and to all standards and regulations applicable to their mining operations. This overall compliance responsibility includes assuring compliance by independent contractors with the Act and with applicable standards and regulations. As a result, both independent contractors and production-operators are responsible for compliance with all applicable provisions of the Act, standards and regulations.

This "overlapping" compliance responsibility means that there may be circumstances in which it is appropriate to issue citations or orders to both the independent contractor and to the production-operator for a violation. Enforcement action against a production-operator for a violation(s) involving an independent contractor is normally appropriate in any of the following situations: (1) when the production-operator has contributed by either an act or by an omission to the occurrence of a violation in the course of an independent contractor's work; (2) when the production-operator has contributed by either an act or omission to the continued existence of a violation committed by an independent contractor; (3) when the production-operator's miners are exposed to the hazard; or (4) when the production-operator has control over the condition that needs abatement. In addition, the production-operator may be required to assure continued compliance with standards and regulations applicable to an independent contractor at the mine.

Inspectors should cite independent contractors for violations committed by the contractor or by its employees. Whether

particular provisions apply to independent contractors or to the work they are performing will be apparent in most instances. However, some provisions of the Act, standards or regulations may not be directly applicable to independent contractors or their work; or independent contractor compliance with certain standards or regulations may duplicate the production-operator's compliance efforts. As questions regarding such matters arise, the inspector's supervisor shall contact the district manager, who shall consult with the Administrator's Office.

The following guidelines cover the responsibility of independent contractors for compliance with 30 CFR Parts 41, 48 and 50.

1. Filing of Legal Identity Reports Under 30 CFR Part 41  
Independent contractors working at mines are not required to file legal identity reports under Part 41. Procedures for the identification of independent contractors are explained below under 45.3, MSHA Identification of Independent Contractors.
2. Training of Independent Contractors and Their Employees Under 30 CFR Part 48
  - a. Construction Workers  
See Part 48 in this Manual, Paragraphs 48.2(a)(1)/48.22(a)(1) - "Miner."
  - b. Comprehensive and Hazard Training  
See Part 48 in this Manual.
  - c. Production of Training Records  
Independent contractors required to provide training are also required to promptly produce training records to show that training has been provided. The location where the records are maintained, such as at a mine site, or at the contractor's office, is up to the independent contractor.
  - d. Enforcement Action for Training Violations
    - 1) General  
An order should be issued under Section 104(g) of the Act to the direct employer of

any miner who has not received the required training under Part 48. This means that a 104(g) order should be issued to the independent contractor for any persons who are directly employed by the independent contractor and who are not properly trained. Similarly, a 104(g) order should be issued to the production-operator for any untrained persons directly employed by the production-operator. See also Item 3), below. In addition, it is the policy of Coal Mine Safety and Health to issue a corresponding citation to the independent contractor or production operator for failure to provide the miner with the requisite training.

- 2) Violations Involving Production-Operators  
Each production-operator is required to have an approved training plan under Part 48 and to comply with the provisions of that plan in training each of the miners it employs. As discussed in Item 3), below, where it cannot be determined who employs an untrained person, the production-operator should be issued a 104(g) order for that person.
  
- 3) Violations Involving Independent Contractors  
Independent contractors are not required to have an approved training plan under Part 48. However, as discussed, independent contractors and their employees must be trained in accordance with Part 48. Independent contractors may comply with the training requirements by either making arrangements to have their employees trained under an existing approved training plan and program, or by filing and adopting their own approved training plan.

In either event, the independent contractor should be issued a 104(g) order for any of his/her employees who are not trained in accordance with a plan approved under Part

48. Care should be taken when issuing a 104(g) order to an independent contractor when several contractors or subcontractors are present at the mine. The inspector must be sure that the untrained person is directly employed by the independent contractor to whom the 104(g) order is issued. If it cannot be determined who employs the untrained person, the production-operator should be issued the 104(g) order.

The foregoing enforcement guidelines for 30 CFR Part 48 are consistent with the training standard's purpose to assure that all persons at mines are effectively trained in matters affecting their health and safety, thereby reducing the number and severity of injuries.

These guidelines recognize that not all independent contractors are able to practically implement their own Part 48 training programs. Accordingly, independent contractors may comply with the training requirements in the manner most suitable for their size and type of business by making arrangements to have their employees trained under an existing approved plan or by filing and adopting their own approved plans.

3. Notification, Investigation, Reporting and Recordkeeping Requirements Under 30 CFR Part 50  
Independent contractors working at mines are required to comply with all provisions of Part 50 pertaining to their employees. In order to assure accurate reporting and recordkeeping and to avoid duplication, it is important that production-operators and their independent contractors carefully coordinate their Part 50 responsibilities.

For detailed information on the reporting responsibilities and obligations of independent contractors, see Part 50 in this Manual.

#### 45.2(c) Definition of Independent Contractor

The Mine Act defines an independent contractor as "any person, partnership, corporation, subsidiary of a corporation, firm, association or other organization that contracts to perform services or construction at a mine." If the "person,

partnership, ... or other organization" contracts for the production of a mineral, the "person, partnership, ... or other organization" is classified as a mine operator, and it is required to file a Legal Identity Report. In addition, it will be assigned a mine identification number, and it is subject to all requirements applicable to a mine operator.

#### 45.3 MSHA Identification of Independent Contractors

Any independent contractor that requests an identification number will receive one from MSHA. However, unless cited for a violation, only those independent contractors performing work at mine sites, or with contracts to perform at a mine(s) any of the nine types of services or construction listed below, are required by MSHA to have identification numbers:

1. Mine development, including shaft and slope sinking;
2. Construction or reconstruction of mine facilities; including building or rebuilding preparation plants and mining equipment, and building additions to existing facilities;
3. Demolition of mine facilities;
4. Construction of dams;
5. Excavation or earthmoving activities involving mobile equipment;
6. Equipment installation, such as crushers and mills;
7. Equipment service or repair of equipment on mine property for a period exceeding five consecutive days at a particular mine;
8. Material handling within mine property; including haulage of coal, ore, refuse, etc., unless for the sole purpose of direct removal from or delivery to mine property; and
9. Drilling and blasting.

MSHA does not require independent contractors to have identification numbers as a precondition to bidding for work contracts on mine property. If an independent contractor becomes a successful bidder and if the contract to be performed covers any of the nine types of service or construction listed above, the contractor must obtain an identification number.

MSHA identification numbers have no effect on the compliance responsibility of either the mine operator or the independent contractor. Mine operators have compliance responsibility for all activities at the mine, regardless of whether or not the independent contractor in question has an MSHA identification number. The mine operator's overall compliance responsibility includes assuring each independent contractor's compliance with the Act and with MSHA's standards and regulations. Independent contractors are responsible for compliance with applicable provisions of the Act, standards and regulations, regardless of whether or not they have an MSHA identification number.

Whenever an independent contractor submits a written request for an identification number, the contractor must furnish the information listed under 30 CFR 45.3(a). If an independent contractor cited for a violation does not have an MSHA identification number, the inspector should obtain the information required by 30 CFR 45.3(a) from the independent contractor. Information required under 30 CFR 45.3(a)(1), (2) and (3) may also be obtained from the production-operator (see 30 CFR 45.4(b)).

Each independent contractor who has an identification number uses it on all job sites. In the event of a change in ownership (but same trade name), a new identification number should be assigned. This means that each independent contractor is assigned only one identification number to be used on any and all job sites.

#### 45.4 Independent Contractor Register

30 CFR 45.4(a) requires independent contractors to provide production-operators with minimal information necessary to the conduct of an MSHA inspection. 30 CFR 45.4(b) requires production-operators to maintain this information in written form at the mine, and to make the information available to an inspector upon request.

In order to accomplish this purpose, both the independent contractor and the production-operator have responsibilities under Section 45.4(a). In the event that an independent contractor refuses to provide the production-operator with the necessary information, the contractor is subject to citation for failure to comply with Section 45.4(a). In addition, if a production-operator refuses to make the necessary information available to the inspector, he or she is subject to citation for violation of Section 45.4(b).

However, there may be instances where the information required by Section 45.4 is not immediately available due to an inadvertent omission which is quickly corrected. For example, where contracts are kept at the mine's central or headquarters office, and a particular independent contractor has begun work on the mine property without the knowledge of the local mine, the inspector should consider all factors relevant to the particular case. If the necessary information can be secured in a reasonable time, no violation for failure to keep an accurate register should be found to exist.

In all cases, it should be kept in mind that Section 45.4 is intended to give the inspector sufficient information so that a fair and efficient inspection can be made. If that information promptly is made available to the inspector so that this goal can be accomplished, then there is no violation of Section 45.4.

**PART 46 Training and Retraining of Miners Engaged in Shell Dredging or Employed at Sand, Gravel, Surface Stone, Surface Clay, Colloidal Phosphate, or Surface Limestone Mines**

III 46.1 Scope

General

Section 115 of the Federal Mine Safety and Health Act of 1977 (Mine Act) and 30 CFR Part 46 require operators to have an approved training plan under which miners are provided training. Part 46 training plans are considered "approved" if they contain, at a minimum, the information listed in § 46.3(b). Plans that do not contain the minimum information listed in § 46.3(b) must be submitted to MSHA for approval.

Compliance Responsibility

Each mine operator is responsible for complying with all applicable provisions of Part 46. Therefore, operators are required to provide all required miner training.

Independent contractors working on mine property must comply with the requirements of Part 46 (see "§ 46.12 Responsibility for Independent Contractor Training"). This includes developing their own training plan that meets the minimum requirements of Part 46 and providing appropriate training.

Industries Affected by Part 46

Part 46 applies to miners working at surface shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, surface limestone, marble, granite, sandstone, slate, shale, traprock, kaolin, cement, feldspar, and lime mines.

Surface Areas of Underground Mines

Underground mines and their surface areas are covered by Part 48. The Part 46 regulations do not apply to training for miners who work at surface areas of underground mines. Miners who work in such areas must continue to receive training that complies with the Part 48 training regulations.

Government Officials on Part 46 Properties

Government officials visiting a mine site are not required to receive Part 46 training. However, MSHA expects those government agencies whose personnel visit mine sites will ensure that their employees are provided with appropriate personal protective equipment, and receive adequate instruction and training. Where training is not provided, such government officials should be accompanied by an experienced miner.

Satisfying both Part 46 and Part 48 requirements

MSHA will allow independent contractors who work at both Part 46 and Part 48 surface mining operations to comply with the training requirements of Part 48, instead of complying with both training rules. This will eliminate the need for developing two training plans and complying with two record-keeping requirements. These contractors may choose to comply with the New Miner, Experienced Miner, Task, and Annual Refresher Training programs of Part 48 to satisfy the training requirements for both regulations. Independent contractors who choose to follow this policy must have their own Part 48 training plan approved by MSHA.

Part 46 defines construction workers who are exposed to hazards of mining operations as miners. Independent contractors that perform construction work on Part 46 properties may train under their own approved Part 48 training plan to satisfy the Part 46 requirement for training construction workers who are exposed to hazards of mining operations.

Operators, at Part 46 operations, remain responsible for ensuring that Site-specific Hazard Awareness Training (§ 46.11) is provided to these contractors.

46.2 Definitions46.2(b) "Competent Person"

Part 46 does not require that "competent persons" be approved by MSHA. A "competent person," is a person who is designated by the production-operator or independent contractor who has the ability, training, knowledge, or experience to provide training to miners in his or her area of expertise. The competent person must be able to effectively communicate the training subject to miners, and evaluate whether the training given to miners is effective.

A competent person may be credited for receiving any training they provide toward their own training requirements.

46.2(c) "Equivalent Experience"

"Equivalent experience" is defined in Part 46 as work experience where the person performed duties similar to duties performed in mining operations at surface mines. "Equivalent experience" includes such things as working at a construction site or other types of jobs where the miner has duties similar to the duties at the mine. These duties could include working as a heavy equipment operator, truck driver on a highway construction site, skilled craftsman, or plant operator.

To determine equivalent experience, production-operators and independent contractors must evaluate the work history of newly-hired employees in determining whether the employees are "experienced" miners. This determination is subject to review by MSHA as part of our verification that production-operators and independent contractors have complied with the training requirements of Part 46.

46.2(d) "Experienced Miner"

Part 46 lists four ways to become an experienced miner.

1. Employed as a miner on April 14, 1999; or
2. Twelve months of cumulative surface mining or equivalent experience on or before October 2, 2000; or
3. Began employment as a miner after April 14, 1999, but before October 2, 2000 and who has received new miner training under § 48.25 or under the proposed requirements published April 14, 1999; or
4. Employed as a miner on or after October 2, 2000 and completed 24 hours of new miner training under § 46.5 or under § 48.25 and has at least 12 cumulative months of surface mining or equivalent experience.

Once a miner has received new miner training under Part 46 or Part 48 and has accumulated 12 months of mining experience within 36 months of receiving new miner training, MSHA considers that miner to be experienced for life for training purposes at all Part 46 mines.

46.2(g) "Miner"

A miner is a person, including any operator or supervisor, who works at a mine and who is engaged in mining operations. This definition includes independent contractors and employees of independent contractors who are engaged in mining operations; and construction workers who are exposed to hazards of mining operations for frequent or extended periods.

The definition of "miner" does not include scientific workers; delivery workers; customers (including commercial over-the-road truck drivers); vendors; or visitors.

Commercial over the road truck drivers are required to have Site-specific Hazard Awareness Training. Part 46 affords operators the discretion to tailor Site-specific Hazard Awareness Training to the unique operations and conditions

at their mines. However, the training must in all cases be sufficient to alert affected persons to site-specific hazards. Under Part 46, Hazard Awareness training is intended to be appropriate for the individual who is receiving it and that the breadth and depth of training vary depending on the skills, background, and job duties of the recipient.

This definition of "miner" also does not include maintenance or service workers who do not work at a mine site for frequent or extended periods.

**"Frequent"** exposure is defined as a pattern of exposure to hazards at mining operations occurring intermittently and repeatedly over time. **"Extended"** exposure means exposure to hazards at mining operations of more than five consecutive work days.

#### 46.2(h) "Mining Operations"

Mining operations means mine development, drilling, blasting, extraction, milling, crushing, screening, or sizing of minerals at a mine; maintenance and repair of mining equipment; and associated haulage of materials **within** the mine from these activities.

#### 46.2(k) "Normal Work Hours"

Normal working hours is defined as "a period of time during which a miner is otherwise scheduled to work." For example, if miners on occasion work on Saturday, they can be trained on Saturday. Part 46 also requires that miners who are being trained be paid at a rate of pay they would have received had they been performing their normal work tasks.

#### 46.3 "Training Plans"

All mining operations which fall under Part 46 must develop and implement a written training plan. Independent contractors who employ "miners" are also primarily responsible for providing comprehensive training to their employees. This requires independent contractors to develop a training plan containing effective programs for providing this training. If arrangements are made to receive training from the production-operator, it must be indicated in the independent contractor's training plan.

A training plan can be used for more than one mine. The plan must list all mine names and MSHA mine identification numbers and must cover all the appropriate training requirements, including Site-specific Hazard Awareness Training, at each mine listed on the plan.

A training plan is considered approved by MSHA if it contains, at a minimum, the following information:

1. The name of the production-operator or independent contractor, mine name(s), and MSHA mine identification number(s) or independent contractor identification number(s).

MSHA does not require independent contractors to get an MSHA identification number for purposes of Part 46. However, if an independent contractor wants to obtain an MSHA identification number, please contact the local MSHA district office, or to file online go to the MSHA Internet Home Page ([www.msha.gov](http://www.msha.gov)) and click on the tab titled "Forms & On-line Filings."

2. The name and position of the person designated by the operator who is responsible for the health and safety training at the mine. This person may be the production-operator or independent contractor.

Some operators, particularly those that operate large facilities, may want the flexibility of having more than one person who can certify that training has been completed. These operators may list more than one person as being responsible for training.

3. A general description of the teaching methods and the course materials that are to be used in the training program, including the subject areas to be covered and the approximate time or range of time to be spent on each subject area.

"Approximate time" means the operator's reasonable estimate of the amount of time that will be spent on a particular subject. For example, the time listed for a particular subject may be "approximately 3 hours," recognizing that when the training is actually given it may require more or less time than is indicated in the training plan. This flexibility allows for adjustments based on changing mine conditions or operations, including the needs and experience of the individuals who receive the training.

When a range of time is used for each subject, the maximum times listed for each subject must be equal to or exceed the required hours for new miner (24) and annual refresher (8) training as required by the regulation. When stating a range it cannot start with a zero.

**Remember:** In all cases a miner must receive no less than 24 hours of new miner training and 8 hours of annual refresher training annually.

4. A list of the persons and/or organizations that will provide the training, and the subject areas in which each person and/or organization is competent to instruct.

The training plan must include all "competent persons" who will instruct in all subjects, including the name of the person who will provide only one type of task training. It is acceptable to indicate the names of several potential instructors for one subject or course, where the operator may call on one of several competent persons to provide the training.

While it is acceptable to list the organizations who will instruct on the training plan, the certificates of training must list the specific competent person's name who provides the training.

5. The evaluation procedures used to determine the effectiveness of training.

Part 46 does not require a specific evaluation method. Instead the rule allows you to select the method that will best determine if training has been effective. Possible evaluation methods include administering written or oral tests, or a demonstration by the miner that he or she can perform all required duties or tasks in a safe and healthful manner.

In addition, periodic work observations can be used to identify areas where additional training may be needed and such observations, along with feedback from the miners, could be used to modify and enhance the training program.

If MSHA discovers that a plan does not meet the minimum requirements of Part 46 one of two actions must be taken.

1) The operator can amend the plan to comply with the requirements of Part 46.3(b) or

2) If you want to conduct training in accordance with the plan that does not meet the minimum information specified in § 46.3(b), the plan must be submitted and approved by the Regional Manager, Educational Field Services Division, for the region in which the mine is located. Until the plan is approved no training can be conducted under the plan. Their addresses are:

Eastern Regional Manager  
Educational Field Services  
National Mine Health and  
Safety Academy  
1301 Airport Road  
Beaver, WV 25813-9426  
Telephone: (304) 256-3223  
FAX: (304) 256-3319  
E-mail: [zzMSHA-EPD - EFS East  
Group](mailto:zzMSHA-EPD - EFS East Group)

Western Regional Manager  
Educational Field Services  
P.O. Box 25367  
Denver, CO 80225-0367  
Telephone: (303) 231-5434  
FAX: (304) 231-5474  
E-mail: [zzMSHA-EPD - EFS West  
Group](mailto:zzMSHA-EPD - EFS West Group)

A plan may also be voluntarily submitted to one of the Regional Managers for approval. MSHA has developed an online program to assist in developing a Part 46 training plan. The following link will open up the MSHA online advisor.

<http://www.msha.gov/forms/pt48train.htm>

Two weeks prior to implementing a new or revised plan, a copy of the plan must be provided to the miners' representative, if any. At mines where no miners' representative has been designated, the plan must be posted or provided to each miner at least 2 weeks before you implement the plan or submit it to the Regional Manager for approval.

If the competent person listed in the approved training plan cannot provide the training, and the training is scheduled within 2 weeks, the operator may substitute an unlisted competent person for the listed competent person without the 2 week advance notice, provided that the operator informs all miners to be trained and their representatives prior to substituting the competent person, and provided that no miners or their representatives object to the substitution.

#### Availability of Training Plan

Section 46.3(i) requires a copy of the training plan to be produced within one business day of a request by MSHA or the

miners or their representatives. The following example explains our policy for one business day.

If MSHA requests that an operator produce a training plan for examination on Tuesday at 1:00 p.m., the deadline for producing the plan would be 1:00 p.m. on Wednesday. If MSHA requests that an operator produce a plan at 2:00 p.m. on Friday at a mine that does not operate over the weekend, the deadline for producing the plan would be 2:00 p.m. on Monday.

#### 46.4 "Training Plan Implementation"

##### 46.4(a)(3) "Presented in language understood by the miners"

Training received by miners in Part 46 must be presented in a language they understand. In addition, if warning signs at the mine serve as a component of the Site-specific Hazard Awareness Training, the signs must be in a language or languages that are understood by the persons who come onto the mine site. If a competent person is providing training to a group, and some individuals are not fluent in English, it is permissible to use a person who is not a competent person as a translator. When using a translator, the operator or contractor should ensure the translator has the ability to translate the information accurately and completely. Further, the translator should be familiar with the subject and terminology in the language being translated, not just in English.

##### 46.4(c) "Crediting Training"

Health and safety training required by OSHA or other federal or state agencies may be credited to meet Part 46 requirements. The training must be relevant to the subjects required under Part 46, and documented accordingly.

##### Computer-Based Training

MSHA considers computer based or other interactive training technologies to be training "methods," to be used by a competent person effectively and appropriately. This would not necessarily require that the competent person be in the room at all times; however, the competent person must be available to evaluate the trainee's progress, and answer questions as they arise.

##### 46.5 "New Miner Training"

A person who is beginning employment as a miner with a production-operator or independent contractor and who is not an experienced miner as defined in definitions under "Experienced Miner," is a new miner for training purposes.

A miner who has less than 12 cumulative months of surface mining or equivalent experience who has completed New Miner Training under Part 46 or Part 48 Subpart B, within 36 months before beginning work at a mine does not have to repeat new miner training (§ 46.5(f)). However, this miner must receive 4 hours of training covering the 7 initial subjects listed in § 46.5 (b).

For example, a miner completes 24 hours of New Miner Training and leaves the mine after working 6 months. The miner then begins work at another mine 6 months later or 12 months since receiving New Miner Training. Since the miner has not fulfilled the 12 months of mining or equivalent experience and begins work at another mine within 36 months, the miner must receive 4 hours of training in the 7 initial subjects listed in § 46.5 (b) before going to work.

#### Close Observation

Section 46.5(e) requires that new miners be under the "close observation" of a competent person when practicing as part of the health and safety aspects of an assigned task. "Close observation" means that the competent person must have the ability to observe a new miner's work practices during task training ensuring the miner is not jeopardizing his or her own health and safety or that of others. This does not mean that the competent person must completely abandon his or her normal duties, as long as the competent person can adequately monitor the work practice. However, in some situations, the competent person may have to cease normal work duties to ensure that this performance-based standard is met.

If the training for a specific task is completed, the miner no longer needs to be under the close observation of a competent person. However, since the miner has not completed the 24 hours of "New Miner Training," the miner is required to work where an experienced miner can observe his or her work practices until the 24 hours of training is completed.

A competent person may not be able in some instances to ride on a piece of mobile equipment with the trainee. When available, the passenger seat is the best location for a competent person providing training to a miner in safe operation of the equipment. However, when a passenger seat is not available, the competent person should be positioned in a safe location in close proximity to the equipment being operated. The competent person should closely observe and monitor the miner's actions from that location.

Hands-on Training

Hands-on training can be counted toward the training required for miners under § 46.5 and § 46.6. Part 46 allows practice under the "close observation of a competent person" to be used to fulfill the requirements for training on the health and safety aspects of assigned tasks required for new miners under § 46.5(b)(4) and newly hired experienced miners under § 46.6(b)(4). The time spent in training may be used to fulfill the training requirements as outlined in the training plan.

Location of Independent Contractor Training

Independent contractors with employees that are required to have 24 hours of new miner training under Part 46 are not required to provide this training on the mine property where their employees will be working. However, when an employee of an independent contractor goes to a mine site, he or she must receive appropriate Site-specific Hazard Awareness Training applicable to the miner's exposure to mine hazards (remember, independent contractors who have received New Miner Training, must also be current with their Annual Refresher Training requirements before working on a mine property).

This Site-specific Hazard Awareness Training could include site-specific health and safety risks, such as geologic or environmental conditions, recognition and avoidance of hazards such as electrical and powered haulage hazards, traffic patterns and control, and restricted areas; and warning and evacuation signals, evacuation and emergency procedures, or other special safety procedures.

46.6 "Newly Hired Experienced Miner Training"

Part 46 does not specify a minimum length of time that must be devoted to this training. The duration of the training needed by a newly hired experienced miner depends on the occupational experience of the miner, the work duties that the miner will perform, and the methods of mining and workplace conditions at the mine where the miner will be working. Except as explained below, the seven subjects listed in § 46.6(b) must be covered before assigning the miner to work.

A newly hired experienced miner who returns to the same mine, following an absence of 12 months or less, is not required to receive the Experienced Miner Training under § 46(b) and (c). Instead the miner must be provided with training on any changes at the mine that occurred during the miner's absence that could adversely affect the miner's health or safety. This training must be given before the miner begins work at the mine. If the miner missed any part of annual refresher training under § 46.8

during the absence, the miner must be provided the missed training no later than 90 calendar days after the returning miner begins work at the mine.

There are no specific requirements for tracking, recording or verifying the accumulation of experience. It is the operator's responsibility to determine the miner's experience based on the miner's work and training history.

When hiring a new experienced miner, Part 46 does not require any specific proof of experience or documentation. However, a reasonable effort should be made to justify previous experience. This may include talking to previous employers, reviewing a resume, pay records, training records, etc.

Experienced miners, who are current with their annual refresher training and the appropriate task training and who move from one mine site to another but remain employed by the same production-operator or independent contractor, are required to receive Site-specific Hazard Awareness Training at each mine where they work.

#### 46.7 New Task Training

Part 46 does not specify the amount of time that must be spent on task training. The performance-oriented approach of Part 46 allows for the needs of individual miners to be taken into account when determining the amount of time. A reasonable amount of time must be allotted for training in each task, based on the individual needs of the miner and the complexity of the assigned task.

If an experienced miner is trained on a specific piece of equipment and is then assigned to operate a similar piece of equipment that is a different model or made by a different manufacturer, that miner is required to receive new task training on the new piece of equipment. Although there may be similarities among different types of equipment, each type of equipment has unique operational characteristics. Miners must be trained on the unique characteristics of each piece of equipment that they are assigned to operate.

Under Part 46 the written training plan must address each task for which training will be conducted. The training plan must include a general description of the teaching methods, course materials, evaluation methods and competent person(s) who will conduct the training. Additionally, the plan must list the approximate time or range of time to be spent on each task training.

The time spent conducting each type of task training must be recorded and listed on the certificate of training form. A "record" of task training must be made at the completion of new task training. New task training records must be "certified" at least once every 12 months or upon request by the miner.

Task training can be a part of new miner training. Although it has a slightly different name, new miners must receive instruction on the health and safety aspects of the tasks to be assigned, including the safe work procedures of such tasks, and the mandatory health and safety standards pertinent to such tasks.

Hands-on training can be used to complete task training. The regulation provides that; "practice under the close observation of a competent person may be used to fulfill the requirement for task training." While training under close observation may be done in a production mode, emphasis should be placed on the training and not the production.

#### 46.8 Annual Refresher Training

Section 46.8 requires that annual refresher training include instruction on changes at the mine that could adversely affect the miners' health or safety. In addition, refresher training must also address other health and safety subjects that are relevant to mining operations at the mine. Section 46.8 includes an extensive list of recommended subjects for refresher training. The flexibility of the performance-based approach of Part 46 allows production-operators and independent contractors to determine the subjects to be covered in annual refresher training based on the needs of their workforce and their operations.

In the regulation, the section on annual refresher training lists recommended subjects that could be included in the training. It is not acceptable to list all these subjects on the training plan and choose different subjects from year-to-year. The training plan needs to accurately represent each subject which you plan to cover during annual refresher training.

As a reminder, if this list is modified, the miners' representative, if any, must be provided with a copy of the plan at least 2 weeks before the plan is implemented. If no miners' representative has been designated, post a copy of the plan at the mine or provide a copy to each miner at least 2 weeks before the plan is implemented.

Annual Refresher Training Anniversary Dates

Annual refresher training anniversary dates are tracked monthly. For example, if a miner completed annual refresher training some time in February, the next annual refresher training must be completed by the end of the following February.

46.9 Records of Training

Part 46 requires that operators record and certify the training that miners receive. Recording means creating a written record of the training. The record must include:

- the full name of the person trained;
- the type of training;
- duration of training;
- the date the training was received;
- the name of the competent person who provided the training;
- name of mine or independent contractor;
- MSHA mine identification or independent contractor number (if applicable); and
- location of training (if an institution, the name and address of institution).

Certifying means verifying, by signature, that the training listed on the written record was completed as indicated on the form. Part 46 requires that this certification be done by the person who has been designated by the operator as responsible for health and safety training at the mine and whose name appears on the training plan. Certifying is required at the completion of training, such as at the end of the 24 hours of new miner training.

Training records must be certified at:

- the completion of new miner training;
- the completion of newly hired experienced miner training;
- the completion of the 8 hours of annual refresher training;
- least once every 12 months for new task training or upon request by the miner; and
- the completion of Site-specific Hazard Awareness Training for miners

A training record or certificate may be maintained in any format, provided that it contains the information listed in § 46.9(b). A "Certificate of Training Form" (MSHA Form 5000-23) may also be used. If a MSHA Form 5000-23 is used it must list the competent instructor(s) who conducted the training, the duration of the training and that the training is for Part 46.

MSHA has developed a sample form which can be used. Both the sample form and the MSHA Form 5000-23 are available from MSHA's Internet Home Page ([www.msha.gov](http://www.msha.gov)), from MSHA's Educational Field Services Division, or from MSHA District and Field offices.

Under § 46.9(b), the records of training must include the name of the competent person who provided the training. If more than one competent person provided the training, the names of all persons must be included.

It is acceptable to list more than one miner on a record or certificate of training. Part 46 allows operators flexibility in choosing the appropriate form for records of training, provided that the form used includes the minimum information specified in § 46.9(b)(1) through (b)(5).

The person who has been designated by the operator or independent contractor as responsible for health and safety training is required to certify, by signature, that training has been completed. This should not be confused with the "competent person" who conducts the training. For example, a state, vocational school or cooperative instructor listed in a training plan may conduct the training and be recorded as the competent person for each subject they teach. The person, who is designated as the person responsible for Part 46 as indicated on the training plan, must certify that the training was completed.

#### Making Records Available to MSHA

A copy of each miner's training records and certificates must be made available for inspection by MSHA and for examination by miners and their representatives. This includes both certified training records and records that have not yet been certified.

#### Maintaining Training Plans and Records

Operators and contractors must make available for inspection by MSHA and by miners and their representatives training plans, training records and certificates (§ 46.9 (g)). If the training plan, training records or certificates are not physically kept at the mine site, they must be "produced upon request;" such as by having them sent from another location via fax machine or computer. Training plans must be made available within one business day, but training records, and certificates with the signature of the person responsible for health and safety training must be made available before inspection activity at the mine concludes for the day. The reason for the difference is a matter of urgency. If a miner is untrained or improperly trained, it is a hazard to the miner and to other miners.

Training records and certificates must be made available to the inspector at the mine site. The inspector may choose, as a matter of convenience, to inspect the records at the office or location where the records are maintained or have them faxed to an MSHA office for his or her inspection that day.

#### Training Certificates for People who are not Considered Miners

A record of training is not required for Site-specific Hazard Awareness Training for persons who are not miners under § 46.2.

However, operators must be able to provide evidence to us, upon request, that the training, when applicable, was provided. This evidence may include the training materials used, including appropriate warning signs, written information distributed to persons, or a visitor log book that reflects that Site-specific Hazard Awareness Training has been given.

#### 46.10 Compensation for Training

Training under Part 46 must be conducted during normal working hours, and the miner must receive the same rate of pay he or she would have received if performing normal tasks at that time. For example, if a miner is paid at time and a half for working on Saturday, the miner must be paid at that same rate for receiving training on Saturday.

#### 46.11 Site-specific Hazard Awareness Training

Part 46 provides that Site-specific Hazard Awareness Training may be provided through the use of written hazard warnings, oral instruction, signs and posted warnings, walkaround training, or other appropriate means that alert affected persons to site-specific hazards at the mine. Part 46 allows the flexibility to tailor hazard awareness training to the specific conditions and practices at the mine. In many cases, an effective Site-specific Hazard Awareness Training program will include a combination of different types of training. The training must be sufficient to alert affected persons to site-specific hazards.

Site-specific Hazard Awareness Training is not required for any person who is accompanied at all times by an experienced miner who is familiar with hazards specific to the mine site.

#### 46.12 Responsibility for Independent Contractor Training

Section 46.12(a)(1) establishes that the production-operator has primary responsibility for ensuring that Site-specific Hazard Awareness Training is given to employees of independent contractors, while § 46.12(b)(1) establishes that each independent contractor who employs a miner under this Part has primary responsibility for complying with other required training. MSHA views § 46.12 as a regulatory indication of whom

the agency will cite for training violations under ordinary circumstances. Both the production-operator and the independent contractor share the responsibility that all miners receive all required training, and in extraordinary circumstances, MSHA may determine that both the production-operator and the independent contractor should be held liable for training violations.

Even though the production-operator has primary responsibility for ensuring that Site-specific Hazard Awareness Training is provided, there may be times where it is more practical for the independent contractor to provide the training. Production-operators may provide independent contractors with site-specific hazard awareness information or training materials and arrange for the independent contractors to provide the training to the contractors' employees. Where this arrangement is made, the production-operator must list the independent contractor by name and document in their training plan that the independent contractor identified will be providing Site-specific Hazard Awareness Training. Even under this arrangement, the production-operator is still responsible for ensuring that the appropriate training is provided.

#### Independent Contractor Training Records

Independent contractors who are miners as defined by Part 46, must make available at the mine site where they are working, a copy of each miner's training certificate for inspection.

**PART 48                    TRAINING AND RETRAINING OF MINERS**48.1/48.21            ScopeGeneral

Section 115 of the Federal Mine Safety and Health Act of 1977 (Mine Act) and 30 CFR Part 48 require operators to submit and obtain approval of training plans under which miners are provided training. The training required by these plans must be provided to miners before they begin work at a mine, or before they receive new work tasks or assignments.

Requirements Related to Hiring and Recall Decisions

When making hiring and recall decisions, mine operators may consider the training persons will need under 30 CFR Part 48 before they begin work. Operators are permitted to require that applicants for employment and laid-off persons obtain this training initially on their own time and at their own expense.

Preemployment training for purposes of Part 48 may be available from cooperative sources, as described in Sections 48.4 and 48.24. If cooperative sources are used, portions of miner training must be mine-specific. Part 48.5 requires that approximately 8 hours of a new miners' underground training be given at the mine site. In addition, training requirements for new and experienced surface miners and experienced underground miners must also be provided mine-specific training. Some examples of these requirements include training in the provisions of the mine roof or ground control and ventilation plans, the use of the self-rescue devices provided at the mine, and the mine transportation and communication systems.

Compliance Responsibility

Each operator is responsible for complying with all applicable provisions of Part 48. Therefore, operators should be prepared to provide all required miner training. This compliance responsibility is not limited by training plans that do not provide for certain training, such as that required for a new miner.

Industries Affected by Part 48

Part 48 applies to coal mines, underground metal and nonmetal mines, surface metal mines, and certain surface nonmetal mines that are not in the following industries: surface stone, surface clay, sand and gravel, surface limestone, colloidal phosphate, and shell dredging mines and other surface operations that produce marble, granite, sandstone, slate, shale, traprock, kaolin, cement, feldspar, and lime. These mining industries must comply with the training requirements of Part 46.

48.2/48.22 Definitions48.2(a)(1)/48.22(a)(1) "Miner"

The determination of whether an individual is classified as a 48.2(a)(1)/48.22(a)(1) "miner" for purposes of comprehensive training or as a 48.2(a)(2)/48.22(a)(2) "miner" for purposes of hazard training must be made on a case-by-case basis. A specific job title does not necessarily determine how the individual is defined; neither does the fact that the worker is physically present on mine property. A determination must be made as to the kind and extent of mining hazard exposure.

Individuals engaged in the extraction or production process, or regularly exposed to mine hazards, or contracted by the operator and regularly exposed to mine hazards, must receive comprehensive training. "Regularly exposed" means either frequent exposure, that is exposure to hazards at the mine on a frequent rather than consecutive day basis (a pattern of recurring exposure), or extended exposure of more than 5 consecutive workdays, or both.

Individuals not engaged in the extraction and production process, not regularly exposed to mine hazards, or inconsequentially exposed to mine hazards must receive the appropriate Sections 48.11/48.31 hazard training.

The training exemption for mining supervisors who are certified in accordance with MSHA-approved state certification requirements under Sections 48.2(a)(1)(ii)/48.22(a)(1)(ii) has been removed. Mining supervisors are now considered to be miners under Part 48 and are required to be trained.

Independent ContractorsA. Coverage and Training Requirements

Independent contractors working at a mine are miners for Part 48 training purposes, except as explained below.

This policy statement does not affect an operator's responsibility to ensure that all miners are appropriately trained. Part 48 requires training prior to performing work in or on mine property. This includes an operator's responsibility to conduct mine-specific training.

This policy does not cover independent contractors who are surface construction workers, or workers involved in underground mine construction work that causes the mine to cease operations. All other independent contractors must receive the appropriate Part 48 training.

Sections 48.2(a)(1) and 48.22(a)(1) define miners including independent contractors who are to receive comprehensive training. Sections 48.2(a)(2) and 48.22(a)(2) define miners including independent contractors who are to receive hazard training.

B. Independent Contractor Training

The appropriate training will be either the comprehensive training (new miner training, experienced miner training, task training, and annual refresher training) or hazard training.

1. Comprehensive Training

Independent contractors must receive comprehensive training if they perform extraction and production work or are regularly exposed to mine hazards.

a. Determination of Appropriate Comprehensive Training

Whether an independent contractor should receive the new miner training (Section 48.5 or 48.25) or the experienced miner training (Section 48.6 or 48.26) depends on whether the miner is an "experienced miner" under Section 48.2(b) or 48.22(b).

b. Extraction and Production

No work time minimum is associated with this provision. Independent contractors who perform extraction and production work must receive the appropriate comprehensive training. "Extraction and production" refers to the process of mining and removal of coal or ore from a mine. This process includes both the mechanical and chemical separating of coal from the surrounding rock and metal or valuable minerals from ore and concentrate; removal and milling of conglomerates or rocks by crushing, screening, or sizing; and haulage associated with these processes.

Short-term independent contractors who perform extraction and production work and have received experienced miner training may, instead of receiving experienced miner training for each subsequent mine, receive hazard training (see Sections 48.2(a)(1)/48.22(a)(1)).

The experienced miner training such contractors receive initially may be largely generic. The training must be of sufficient duration and content to cover the principles of mine safety and health, as well as the types of hazards they

Might encounter at the mines. Thorough hazard training satisfies the mine-specific training through the program approved as part of the approved training plan.

- c. Maintenance or Service Workers Who are Regularly Exposed to Mine Hazards  
Independent contractors who are regularly exposed to mine hazards, or who are maintenance or service workers contracted by the operator to work at a mine for frequent or extended periods, must receive comprehensive training. "Regularly exposed" means either frequent exposure, that is exposure to hazards at the mine on a frequent rather than consecutive day basis (a pattern of recurring exposure), or extended exposure of more than 5 consecutive workdays, or both.
- d. Selection of Training Programs  
Independent contractors may submit their own training plans and conduct their own MSHA-approved training program, use an MSHA-approved cooperative program, or use the MSHA-approved training program for the mine.

2. Hazard Training

Independent contractors not previously described who are exposed to mine hazards are to receive hazard training under Sections 48.11/48.31.

Independent contractor exposure to hazards varies from situation to situation. Hazard training must be tailored to fit the training needs of the particular contractor. Training these contractors receive must be of sufficient content and duration to thoroughly cover the mine-specific conditions, procedures, and safety devices. Training must include hazards incident to the performance of all job assignments by the contractor at the mine. An experienced miner must accompany independent contractors subject to hazard training at all times while underground (Section 48.11(e)).

Persons Performing Construction Work

Construction work includes the building or demolition of any facility, the building of a major addition to an existing facility, and the assembling of a major piece of new equipment, such as installing a new crusher or the assembling of a major piece of equipment such as a dragline.

A. Underground Mines

If construction work is of a major addition that causes the mine to cease operations, no training is required under Part 48.

However, Part 48 training is required if the:

1. construction work is not of a "major addition which requires the mine to cease operations;" or
2. mine is "operational" (that is, if the mine is producing material or if a regular maintenance shift is ongoing).

B. Surface Mines or Surface Areas of Underground Mines

No training is required under Part 48 if workers are performing construction work.

Persons Performing Maintenance or Repair Work

Maintenance or repair work includes the upkeep or alteration of equipment or facilities. Replacement of a conveyor belt would be considered maintenance or repair.

A person performing maintenance or repair work, whether or not the mine is operational, must receive the appropriate comprehensive or hazard training under Subpart A or B. The type of training depends upon whether the person is regularly exposed to mine hazards.

Miners Performing Work at More Than One Mine

If a miner is based at one mine or at a central shop and periodically works at other mines owned by the operator, the miner must receive comprehensive training under Subparts A and B, as appropriate, supplemented by additional hazard training, as under Section 48.11/48.31, at each of the other mines.

Underground and Surface Miners - Crediting Training

A miner who works in both an underground mine and a surface mine or surface area of an underground mine must have received comprehensive underground and surface training under Subparts A and B. Credit should be allowed for applicable training taken under one subpart to meet requirements of the other subpart.

48.2(a)(2)/48.22(a)(2) "Miner"

For hazard training (Sections 48.11/48.31), a "miner" is a person who is not an extraction and production worker and who is not regularly exposed to mine hazards. "Regularly exposed" means either frequent exposure, that is exposure to hazards at the mine on a frequent rather than consecutive day basis (a pattern of recurring exposure), or extended exposure of more than 5 consecutive workdays, or both.

Miners included within the definition must be accompanied by an experienced miner at all times while underground. The required training should be commensurate with the expected exposure to hazards.

48.2(b)/48.22(b) "Experienced Miner"

Under Section 48.2(b), an "experienced miner" is:

1. a miner who has completed MSHA-approved new miner training for underground miners or training acceptable to MSHA from a State agency and who has had at least 12 months of underground mining experience; or
2. a supervisor who is certified under an MSHA-approved State certification program and who is employed as an underground supervisor on October 6, 1998; or
3. an experienced underground miner on February 3, 1999.

An experienced underground miner on February 3, 1999 includes a miner:

- a. who was employed as an underground miner on October 13, 1978;
- b. who has received 40 hours of new miner training within 12 months prior to February 3, 1999; or
- c. who has had at least 12 months of underground mining experience during the 3 years preceding February 3, 1999.

Under Section 48.22(b), an "experienced miner" is:

1. a miner who has completed MSHA-approved new miner training for surface miners or training acceptable to MSHA from a State agency and who has had at least 12 months of surface mining experience; or
2. a supervisor who is certified under an MSHA-approved State certification program and who is employed as a surface supervisor on October 6, 1998; or
3. an experienced surface miner on February 3, 1999.

An experienced surface miner on February 3, 1999 includes a miner:

- a. who was employed as a surface miner on October 13, 1978;
- b. who has received 24 hours of new miner training within 12 months prior to February 3, 1999; or

- c. who has had at least 12 months of surface mining experience during the 3 years preceding February 3, 1999.

Once a miner has received new miner training and has accumulated 12 months of mining experience, MSHA considers that miner to be experienced for life for training purposes. MSHA also considers miners who are experienced miners under the old rule as described above to be experienced miners for life.

Miners included in any of the above categories need not be provided new miner training. However, experienced miner, annual refresher, and, when appropriate, task training are required.

After receiving new miner training, a miner will need to accumulate 12 months of mining experience to be considered an "experienced miner" for training purposes. If the miner leaves mining before accumulating the 12 months of mining experience and:

- A. less than 36 months has passed since receiving new miner training, the miner must receive experienced miner training before starting work.
- B. more than 36 months has passed since receiving new miner training, the miner must repeat new miner training.

There are no specific requirements for tracking, recording or verifying the accumulation of experience. It is the operator's responsibility to determine the miner's experience based on the miner's work and training history.

#### 48.2(c)/48.22(c) "New Miner"

Persons who do not meet the criteria for experienced miners found in Sections 48.2(b)/48.22(b) must receive new miner training (Sections 48.5/48.25) when starting to work or returning to work after an absence of more than 3 years to obtain experienced miner status.

- A. Underground Mines  
An experienced surface miner who begins work in an underground mine is, for training purposes, a new miner, and must be provided new miner training under Section 48.5. Credit is allowed for applicable surface training (Subpart B).
- B. Surface Mines or Surface Areas of Underground Mines  
An experienced underground miner who begins work in a surface mine or surface area of an underground mine is for training purposes a new miner, and must be provided new miner training under Section 48.25. Credit is allowed for applicable underground training (Subpart A).

48.2(d)/48.22(d) "Normal Working Hours"

Training may only be conducted during "normal working hours." "Normal working hours" are determined on a case-by-case basis. Factors such as past practices and patterns of scheduling work should be considered.

Miners attending a Part 48 training session during "normal working hours" must be paid at the rate they would receive if they were working at the time. A reasonable rest period between training sessions and working shifts should be provided.

48.2(e)/48.22(e) "Operator"

Independent contractors are responsible for the Part 48 training of their employees (see 30 CFR Part 45 and this manual for more information). A contractor may have his/her own training plan or may utilize the mine operator's plan.

48.3/48.23 Training Plans; Time of Submission; Where Filed; Information Required; Time for Approval; Method for Disapproval; Commencement of Training; Approval of Instructors

Sections 48.3(a)(1)/48.23(a)(1), 48.3(a)(2)/48.23(a)(2), and 48.3(k)/48.23(k) are no longer applicable. These sections were intended to allow operators time for initial implementation of Part 48. Each operator now has ample time to prepare a training plan prior to opening a new mine or reopening a closed mine, and is, therefore, expected to provide training prior to assigning work duties.

Each operator must submit the information required by Section 48.3(c)/48.23(c), and may use a format that is logical and reasonable. There is an optional electronic version available on the MSHA Homepage ([www.msha.gov](http://www.msha.gov)).

Operators must indicate a predicted time that training will occur, such as the first week of each quarter. Specific days and times of the training can be obtained by MSHA, as needed, upon request.

If changes are made to the list of MSHA approved instructors, they are not required to be submitted to MSHA for approval, provided that the list of approved instructors is maintained with the approved plan at the mine and is made available for MSHA inspection and examination by the miners and their representatives. Mine operators are still responsible for notifying the miners and miners' representative of any revisions to their list of MSHA approved instructors.

If a change in mine ownership results in changes in procedures or conditions at the mine, a new training plan must be submitted to MSHA for approval. If conditions and procedures do not change, the new operator may continue to utilize the current plan with appropriate administrative changes, pending a review by the District Manager. If plan changes are required in

accordance with Sections 48.3(m)/48.23(m) (1,2,3), the District Manager will indicate in writing required changes and how the deficiencies can be corrected.

#### "Limited" Instructor Cards

Instructors designated by MSHA as approved instructors for surface operations (IS) or underground operations (IU) may be approved to teach all courses under the appropriate subpart of 30 CFR Part 48 or may be limited to teach only specific courses.

Effective August 1, 1988, those instructors who are approved to teach only specific courses under Part 48 must have the word "LIMITED" printed in the lower left corner of their MSHA Instructor Card.

No such designation will appear in the lower left corner of the MSHA Instructor Card for instructors who are approved without limitations.

#### Instructors for Task Training

Under Sections 48.3(g)/48.23(g), task training required by Sections 48.7/48.27 may be given by a qualified trainer, by an experienced supervisor, or by persons experienced in the particular task. Sections 48.3(c) (8) (ii)/48.23(c) (8) (ii) require listing in the training plan only the job titles of the persons conducting the task training, and not their names.

#### 48.4/48.24 Cooperative Training Program

Training requirements for new miners and experienced miners (Sections 48.5/48.25 and 48.6/48.26) provide for mine specific training. Some examples of these requirements include: introduction to work environment; mine roof, ground controls, and ventilation plans; the use of self-rescue devices; escape and emergency procedures; mine transportation and communication systems; and the health control plan. Some subject matter may contain generic and mine-specific aspects. The mine-specific aspects may be addressed by the cooperative trainers or the mine operator. In all instances, new underground miner training given through a cooperative source must provide for approximately 8 hours of training to be given at the mine site where the miner is employed.

Annual refresher training (Sections 48.8/48.28) is required to cover such mine specific matters as the use of self rescuers, the review of roof or ground control plans, and health control plans. If the cooperative is to teach the annual refresher, the mine-specific aspects must be addressed.

#### 48.5/48.25 Training of New Miners; Minimum Courses of Instruction; Hours of Instruction

##### A. Underground Mines

An experienced surface miner who begins work in an underground mine is, for training purposes, a new miner and must receive new miner training under Section 48.5. The MSHA district manager

may credit applicable surface training (Subpart B) toward the underground training (Subpart A) requirement.

B. Surface Mines and Surface Areas of Underground Mines

An experienced underground miner who begins work in a surface mine is, for training purposes, a new miner and must receive new miner training under Section 48.25. The MSHA district manager may credit applicable underground training (Subpart A) toward the surface training (Subpart B) requirements.

Job Site Training

Health and safety training may be conducted at the job site and may involve performance of actual job tasks. Job site training must be completed under close and continuous supervision of an approved instructor, with training, not production, as the primary goal. The training is acceptable if the following conditions are met:

1. Instructors must follow an outline in which each step of the job is broken down into instructional units. The students must demonstrate safe performance of each job step. Several units may be combined in the same instructional period.
2. All health and safety standards must be observed.

48.6/48.26 Experienced Miner Training

Health and safety training may be conducted at the job site and may involve performance of actual job tasks. Guidelines for job site training are set out under Sections 48.5/48.25 above.

When an experienced miner returns to the same mine following an absence of 12 months or less, the miner must be informed about major changes affecting safety or health that have occurred at the mine during the absence before the miner starts work. Also, the miner must complete annual refresher training as required in Section 48.8/48.28 before starting work, if the miner missed that training during the absence.

With one exception, there are no time requirements for experienced miner training. However, for miners returning to mining after an absence of 5 years or more, the returning "experienced miner" must receive at least 8 hours of experienced miner training.

48.7/48.27 Training of Miners Assigned to a Task in Which They Have Had No Previous Experience; Minimum Courses of Instruction

An appropriately completed Job Safety Analysis may be used as a training guide when conducting task training as long as it complies with the task training requirements of Part 48.

48.8/48.28 Annual Refresher Training of Miners; Minimum Courses of Instruction; Hours of Instruction

Sections 48.8(c)/48.28(c) applied during the implementation of the regulation and are no longer applicable.

Operators may provide annual refresher training at any time during the last calendar month of the miner's annual refresher training cycle. To illustrate this policy, miners who began work in July 2001 must complete their annual refresher training any time in July 2002. Accordingly, training records and schedules may be maintained on a monthly basis, rather than tracking each miner's individual training date. Also, operators should be encouraged to schedule annual refresher training at the beginning of the month so that if for some reason a miner misses the regularly scheduled training, there will still be a reasonable opportunity for the training to be made up before the end of the month.

Annual refresher training is required to cover such mine-specific matters as the review of roof or ground control plans and health control plans in effect at the mine.

Refresher health and safety training may be conducted at the job site and may involve performance of actual job tasks. Guidelines for job site training are set out under Sections 48.5/48.25.

Refresher Training Following an Absence

The following training is required for experienced miners as defined in Sections 48.2(b)/48.22(b) who return to work following an absence:

1. When an experienced miner returns to the same mine following an absence of 12 months or less, the mine operator must provide annual refresher training based on the miner's original schedule before the absence. The miner must complete annual refresher training before starting work, if the miner missed that training during the absence. Also, the miner must receive training that covers major changes affecting safety or health that have occurred at the mine, before the miner starts work. This training may be credited toward the miner's annual refresher training.
2. When an experienced miner returns to the mine following an absence of more than 12 months, the operator must provide experienced miner training before the miner begins work. This starts a new annual refresher training date for this miner.

In either case, if the miner is assigned a new work task, the operator must provide new task training prior to having the miner perform that task.

The above does not apply to experienced miners assigned to work underground or on the surface for the first time. These miners are "new miners" under the training regulations and must receive new miner training. Credit can be given for applicable underground or surface training.

#### Extension of Time to Complete Annual Refresher Training

The unexpected return of miners after absences may create a strain between the completion of quality refresher training and prompt return of the miners to productive employment.

In order to accommodate unforeseeable events, district managers may consider requests for limited extensions of time to complete annual refresher training. Such requests will be considered on a case-by-case basis, and be granted only if:

1. The miners involved are experienced, as defined by Sections 48.2(b)/48.22(b).
2. Good faith efforts were made by the operator to train the miners before the annual refresher training anniversary date passed.
3. The miners, before returning to work, will be given any task training required by Sections 48.7/48.27, and will be thoroughly instructed in any changes in procedure at the mine or in the mining environment. In underground mines, these procedures must include changes in roof control, ventilation, emergency escapeways, and transportation controls.
4. The required annual refresher training will be promptly completed.

Subject to additional conditions that the district manager may require, a request for a limited extension of time to complete annual refresher training may be granted when these factors are met. In no case, however, should extensions be granted to correct poor scheduling practices or failure to anticipate foreseeable training needs, nor should provisions for an extension of time appear in an operator's approved training plan or otherwise be routinely granted.

When extensions of time to complete annual refresher training are granted, such extensions should be confirmed in writing to the operator, stating the conditions of the extension and the date that refresher training will be completed. The completion date of this refresher training cycle initiates a new anniversary date.

#### Annual Refresher Guidelines for Training Plans

An effective refresher training program must be adapted to changes in mining conditions, accident history, and other training concerns. Time spent for each course may vary to meet

specific needs. The following guidelines should be used to evaluate provisions for annual refresher training:

1. The required annual refresher training courses listed in Sections 48.8/48.28 that are not applicable to a particular mine may be omitted from that mine's training plan. A notation of which courses are not applicable should appear in the training plan.
2. An 8-hour minimum is required for the total annual refresher training program. However, the time spent on individual courses may vary from year to year or from one area of the mine to another depending on specific safety or health problems encountered. The mine's accident experience should significantly influence the amount and type of training miners receive throughout the year.
3. All applicable refresher training courses listed in the approved training plan are to be given during each 12-month cycle. However, two or more of the courses may be covered in one training session or safety meeting. For example, a well structured safety meeting may cover ground control, related safety standards, prevention of accidents, and other topics without the necessity of separate blocks of instruction.
4. Safety meetings of at least 30 minutes duration, conducted by an MSHA-approved instructor, and addressing appropriate course content are acceptable training sessions that satisfy the annual refresher requirements.

Training plans may be revised to reflect training needs. Requests for revisions should be submitted in accordance with Sections 48.3(j)(1)/48.23(j)(1).

#### 48.9/48.29 Records of Training

##### Approved Forms

All Part 48 training must be properly recorded by the operator on an MSHA Form 5000-23 (Certificate of Training), or on an "MSHA Approved Alternate Form." Alternate forms must include at least as much information as the Form 5000-23, and should be labeled MSHA Approved Alternate Form 5000-23 (current month and year). Forms proposed by the operator must be sent for approval to the Director of Educational Policy and Development, MSHA, 1100 Wilson Boulevard, Arlington, Virginia 22209-3939.

##### Record-Keeping Requirements

Operators are required under Sections 48.9/48.29 to give a copy of the training certificate, MSHA Form 5000-23, or an approved alternate, to the miner upon completion of each MSHA approved training program. A "training program" is any miner training

(i.e., new miner, experienced miner, task, annual refresher or hazard training) completed during a 12-month training cycle.

In order to simplify record-keeping, all MSHA approved training programs completed within a miner's 12-month training cycle may be recorded on one Form 5000-23, provided the following procedures are used:

1. Each time a miner completes an MSHA approved training program, the operator must initial and date the form to certify that the miner has received the specified training. Initialing and dating can be done in the space on the form adjacent to the type of training. Also, the miner should be given an opportunity to sign or initial the form.
2. When a MSHA approved program is completed and recorded by the operator, a copy of the certificate must be given to the miner upon request.
3. At the end of the 12-month training cycle, or when the miner signs item 8 of the form, a copy of the completed form listing all completed training programs and signed by the operator or the operator's representative must be given to the miner.

#### For Cooperative Training Programs

Under Sections 48.4/48.24, the cooperative trainer may sign the training certificate upon "partial completion" of cooperative training. Final signature upon completion of the program must be by the operator or his representative.

#### For Surface Mines and Surface Areas of Underground Mines

Under Section 48.31 Hazard Training, the operator may use a Form 5000-23 for hazard training. The Form 5000-23 need not be used, however, if the following situations satisfy hazard training requirements:

1. Verbal instructions of mine hazard avoidance procedures are given by mine personnel, and the person receiving the instructions signs a log sheet indicating receipt of the instructions.
2. Written instructions of mine hazard avoidance procedures are supplied. The written instructions, signed by the person receiving them, or a log sheet signed by the recipient must be maintained as a record.

#### 48.10/48.30 Compensation for Training

Sections 48.10/48.30 implement Section 115(b) of the Mine Act ("Miners shall be paid at their normal rate of compensation while they take such training"). Sections 48.2(d)/48.22(d), which define "normal working hours," state in part that:

"miners shall be paid at a rate of pay which shall correspond to the rate of pay they would have received had they been performing their normal work tasks."

The purpose of both the statute and the regulations is to assure that miners are not financially penalized when they receive training during work hours. For example, if a miner is "cross shifted," and the "cross shift" is considered normal working hours, the rate of pay the miner would receive if working is the rate the miner must receive while in training.

#### 48.11/48.31 Hazard Training

The exposure to mining hazards varies according to the task. The greater the hazard exposure, the greater the need for training. Hazard training should be:

1. mine specific, so that persons are advised of the hazards they may encounter at a particular mine; and
2. conducted each time a person enters a different mine.

#### Examples of Appropriate Training

Although the amount of required training may vary, the following are examples of appropriate training:

##### 1. Employees of Equipment Manufacturers

- a. Employees who are on the mine site in a service or maintenance capacity must be given training in accordance with their exposure to hazards. If the specific job will not entail frequent or extended exposure to hazards at the mine, they need only be given hazard training.

If the job assignment of a service or maintenance worker is contracted to work at a mine for frequent or extended periods, and they are exposed to mining hazards, comprehensive training must be given -- either new miner training or experienced miner training, as appropriate. In addition, if appropriate, the employees must be provided with and instructed in the use and location of the self-rescue device made available at the mine as required by 30 CFR 75.1714, or meet the requirements for self-rescue devices as provided under 30 CFR 57.15030 and 57.15031, and trained pursuant to 57.18028(b), as applicable.

- b. Manufacturers' field representatives, such as sales representatives, must be given training in accordance with their exposure to hazards at the mine. If they are regularly exposed to mine hazards, they must be given comprehensive

training either new miner training, or experienced miner training, as appropriate.

2. Labor, Management or Government Officials

- a. Labor, management, or government officials visiting the mine site need not be given training. However, such persons should be accompanied by experienced miners and be provided with appropriate safety equipment and self-contained self-rescuer (SCSR) training (see 30 CFR 57.15031 and 75.1714).
- b. Authorized representatives of the Secretary of Labor or Secretary of Health and Human Services need not be given any Part 48 training or be accompanied when carrying out duties required by 30 CFR or by the Mine Act.
- c. Contractors doing work for the government which requires their presence at the mine to observe conditions or to collect information must be given hazard training.

3. Customers and Delivery Persons

- a. For purposes of training, customers are individuals who are briefly on mine property to pick up mined materials.

The extent of customers' exposure to mine hazards varies. Training is not required if there is no exposure to mine hazards. Customers must receive hazard training commensurate to their exposure to mine hazards. In addition, they must be trained in the health and safety aspects and safe operating procedures of any mine machinery or equipment that they are required or allowed to operate while on mine property. Comprehensive training would apply to customers engaged in the extraction and production process.

- b. Delivery persons are individuals who enter mine property briefly to deliver supplies, who are not engaged in the extraction and production process, or do not perform maintenance and service work.

Delivery persons must receive hazard training commensurate to their exposure to mine hazards. MSHA expects a realistic appraisal by the mine operator of the hazards associated with such jobs.

4. Other Visitors

a. Underground Mines

Short-term visitors to mine sites who are not required to be provided Part 48 training must be provided with and instructed in the use and location of the self-rescue device made available at the mine as required by 30 CFR 75.1714, or meet the requirements for self-rescue devices as provided under 30 CFR 75.15030 and 57.15031, and trained pursuant to 30 CFR 57.18028(b), as applicable.

b. Surface Mines and Surface Areas of Underground Mines

Students on field trips and other short term visitors (1 day or less) need not be given Part 48 training. However, they should be accompanied by experienced miners and be provided with appropriate safety equipment.

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**PART 49**                    **MINE RESCUE TEAMS**49.2(a)                    Mine Rescue Team Requirement

When a mine operator has more than two mine rescue teams located at a mine rescue station, only the teams that have been designated by the operator to satisfy this Section will be subject to the requirements of Part 49.

49.2(a)                    Mine Rescue Service Arrangements

When an operator enters into an arrangement with another entity to provide mine rescue services, that entity must have supervisory control over the members of the mine rescue teams so that the team members can be instructed to present themselves at the mine site in the event of an emergency.

Examples 1 through 5, attached at the end of this Part 49, illustrate some of the arrangements for mine rescue services that may be encountered, together with instructions on what is necessary to establish these arrangements.

49.2(c)                    Mine Rescue Team Qualification

Persons who became members on and after July 11, 1981, must satisfy the 1-year underground experience requirement in this rule. For the purposes of mine rescue work only, surface miners whose work regularly takes them underground qualify for the underground experience requirement and, therefore, are eligible for team membership. The underground experience requirement is waived only for those miners who were on established mine rescue teams as of July 11, 1981.

49.2(d)                    Advance Ground Transportation Arrangement

The operator must make arrangements in advance for ground transportation so that the teams and equipment can be dispatched to the mine with minimum delay in the event of a mine emergency. This does not mean, however, that the ground transportation must remain at the mine rescue station at all times.

49.2(h)                    Operator Statement

The statement submitted by the operator shall state that either the operator has independently provided mine rescue teams or that the operator has entered into an agreement with

another entity for this service. The name and the location of the entity providing the service shall also be included.

When mine operators make mine rescue services available through agreements with other mine operators or independent entities, such arrangements shall be reviewed by the district manager to assure that the mine rescue capability to be provided satisfies the requirements of Part 49.

49.3(a) Alternative Mine Rescue Capability for Small and Remote Mines

Where the total underground employment of the operator's mine and any surrounding mine(s) within 2 hours ground travel time is less than 36 persons, an operator may provide for alternative mine rescue capability under Section 49.3. However, it should be noted that compliance with Section 49.2 (Availability of Mine Rescue Teams) is required where a group of mines are located within 2 hours of ground travel time to each other and collectively employ 36 or more miners underground, unless the underground mine qualifies for alternative rescue capability for special mining conditions under Section 49.4.

49.5(a) Designation of Mine Rescue Stations

Every operator of an underground mine is required to designate, in advance, the location of the mine rescue station serving the mine.

49.5(b) Centralized Storage for Mine Rescue Equipment

All of the mine rescue equipment required by Section 49.6 (Equipment and Maintenance Requirement) must be stored at one location (see Example No. 5). MSHA recognizes that in certain circumstances the same protection provided by this requirement may also be achieved through different storage arrangements. However, storage of mine rescue equipment at more than one location may only be adopted through the petition for modification process (30 CFR Part 44).

49.5(d) Inspection of Mine Rescue Station<sup>1</sup>

When a mine operator has more than one mine rescue station within 2 hours ground travel time of the mine or mines, only the designated rescue station and teams assigned to that station will be subject to the requirements of Part 49.

If, for example, three mines owned by different companies enter into an arrangement and designate a common mine rescue station, while still maintaining their own individual teams and stations, inspection activity for Part 49 compliance would be limited to the designated station and to teams assigned to that station only.

However, if the operator designates more than one mine rescue station, each station and teams assigned to those stations must meet the requirements of Part 49.

Mine rescue facilities and/or teams situated on the property of an underground mine and maintained by mine operators or independent contractors will be regularly inspected. If an independent contractor maintains mine rescue facilities and/or teams on mine property, citations or orders for Part 49 violations should be issued to the independent contractor under Part 45.

Mine rescue facilities and/or teams located off mine property which are maintained by independent contractors for purposes of Part 49, shall be examined at least twice each year. This examination shall be for purposes of determining whether the mine operators served by the independent contractors have arranged for the required rescue services. When independent contractors located off mine property are not equipped to provide the services required by Part 49, the mine operators served by these contractors shall be issued citations for failure to have arranged for the required rescue services. In each citation, the operator should be notified of the deficiencies in his/her contractor's mine rescue services. To abate the violation, the

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<sup>1</sup> Nothing in these interpretations is intended to limit MSHA's jurisdiction over and authority to inspect independent contractors located off mine property who provide mine rescue team service to mine operators for purposes of Part 49.

operators must either make other arrangements which satisfy Part 49, or have the contractor correct the deficiencies.

Where independent contractors who provide rescue team services to operators are located off mine property, and they refuse or impede MSHA examination of their facilities, the mine operators served by the contractor shall be issued citations for failure to arrange for the rescue services required by Part 49. To abate the violation, the operators must make other arrangements which satisfy Part 49 or assure that examination of the contractor's facilities can be properly made.

These instructions do not apply to those state agencies who have entered into a Memorandum of Understanding with MSHA. The terms of the Memorandum of Understanding will govern the frequency of inspections and actions to be taken.

#### Inspection of Mine Rescue Stations Serving Both Coal and Metal/Nonmetal Mines

Where coal mining and metal/nonmetal mining are performed in the same geographical area, the mine operators for both types of mines may designate the same mine rescue station to serve their mines. If this situation exists, the mine rescue station shall be inspected by personnel from either Coal Mine Safety and Health or Metal and Nonmetal Mine Safety and Health, but not by personnel from both entities.

To avoid duplication of MSHA inspections and minimize confusion as to which entity should inspect mine rescue stations, the policy below shall be followed:

1. Mine rescue stations located on mine property that have been designated to serve coal mines and metal/nonmetal mines shall be inspected by the entity having jurisdiction over the mine.
2. Mine rescue stations located off mine property that have been designated to serve coal mines and metal/nonmetal mines shall be inspected by the entity having jurisdiction over the majority of mines being

served by the rescue station. If the station serves an equal number of coal and metal/nonmetal mines, the entity having jurisdiction over the majority of mines in the area shall make the inspection.

3. Questions as to which entity should inspect a mine rescue station shall be decided between the appropriate district managers of the two entities.

#### State Mine Rescue Stations

There are currently eight states which have entered into a Memorandum of Understanding with MSHA concerning mine rescue. They are:

Alabama	Indiana	Kentucky
Ohio	Illinois	Tennessee
Virginia	West Virginia	

These states provide mine rescue services to mines within their respective jurisdictions. According to each MSHA-State Agreement, inspections of rescue stations are to be conducted every 6 months by a designated MSHA representative in the district where the station is located.

Particular attention should be given to paragraph IID of the Agreement which sets out the procedures to be followed for cooperative correction of violations of 30 CFR Part 49. Under this paragraph, violations must be brought immediately to the attention of the appropriate state official so that the state may take prompt action to correct them. However, no citation or order should be issued to the state. Additionally, the following guidelines should be used in conducting inspections:

1. The inspection report is to be sent to the Department of Mines in the state where the station is located.
2. If an inspection discloses a violation of 30 CFR Part 49, and disagreement arises between the state and the MSHA district that prevents a cooperative resolution of the problem, a memorandum to the appropriate MSHA Chief, Division of Safety, is to be prepared that sets out the facts necessary for a determination of the appropriate action to be taken.

49.6 Equipment and Maintenance Requirements

In some instances, inspectors may find that operators exceed the minimum requirements for the equipment. If, for example, equipment for three teams is located at a mine rescue station and if sufficient equipment is maintained in operating condition for two teams, there would be no violation if the remainder of the equipment is not in operating condition. However, the inspector should recommend that the non-operational equipment be segregated or conspicuously identified to avoid the possibility of its use in an emergency.

49.8(a) Training for Mine Rescue Teams

Persons who become team members on and after July 11, 1981, must complete the initial 20-hour training course prescribed by MSHA's Office of Educational Policy and Development. The initial training requirement is waived only for those miners on established mine rescue teams as of July 11, 1981, because such miners would already be familiar with the use, care and maintenance of the selected breathing apparatus.

49.8(b) (2) Periodic Breathing-Apparatus-Wearing Requirement

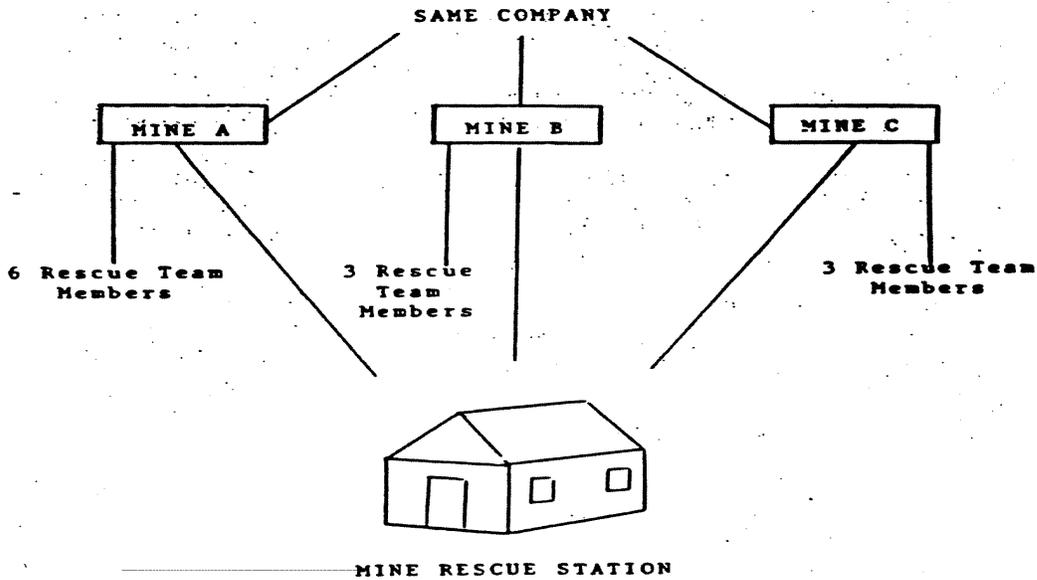
For training purposes, the wearing of the breathing apparatus by team members while under oxygen must total 2 hours every 2 months. This may be accomplished by wearing the apparatus continuously for 2 hours or in smaller increments which total 2 hours for the 2-month period.

Mine rescue team members who participate in a bonafide mine rescue contest will receive an 8-hour training credit which may be applied toward fulfilling the annual refresher training requirements of 30 CFR 49.8(b). The training credit must be used within 365 days following the date of the mine rescue contest in which it was earned. Only one 8-hour training credit will be granted and used during any one calendar year.

In order to receive such credit, it is necessary that preparation for and participation in the mine rescue contest include the following elements required by Section 49.8(b):

- the wearing and use of the breathing apparatus by team members for a period of at least 2 hours while under oxygen every 2 months;
- where applicable, the use, care, capabilities, and limitations of auxiliary mine rescue equipment, or a different breathing apparatus;
- any other advanced mine rescue training and procedures as prescribed by MSHA's Educational Policy and Development (EP&D); and
- mine map training and ventilation procedures.

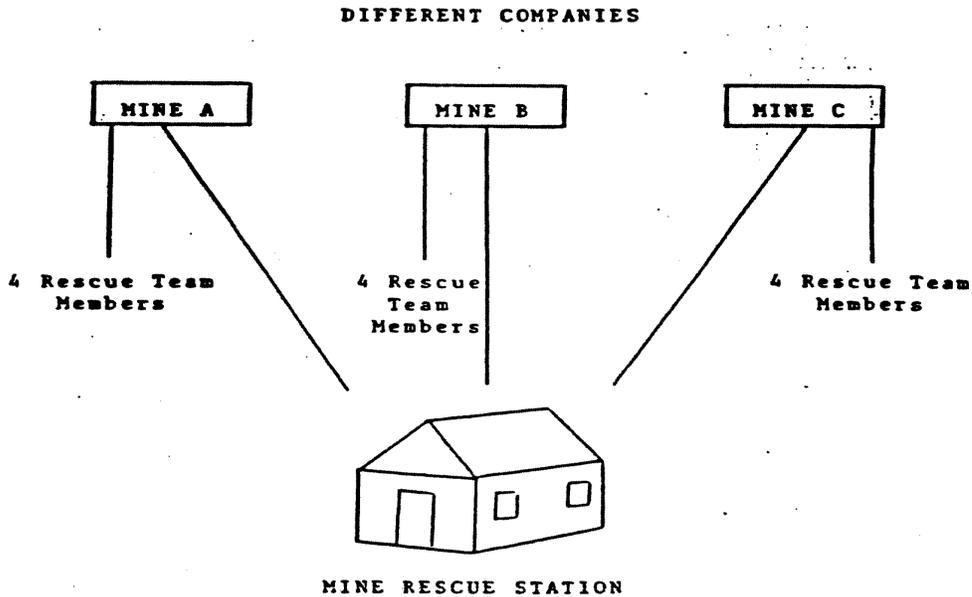
This credit will not satisfy the requirement that training sessions be conducted underground at least once each 6 months. In addition, team training conducted apart from the competition must satisfy all elements of Section 49.8(b).

Example 1

**SITUATION:** All three mines and the rescue station are owned by the same company. The two rescue teams are comprised of members from each mine.

**QUESTION:** Should each mine enter into an arrangement with the other mines to satisfy the requirements?

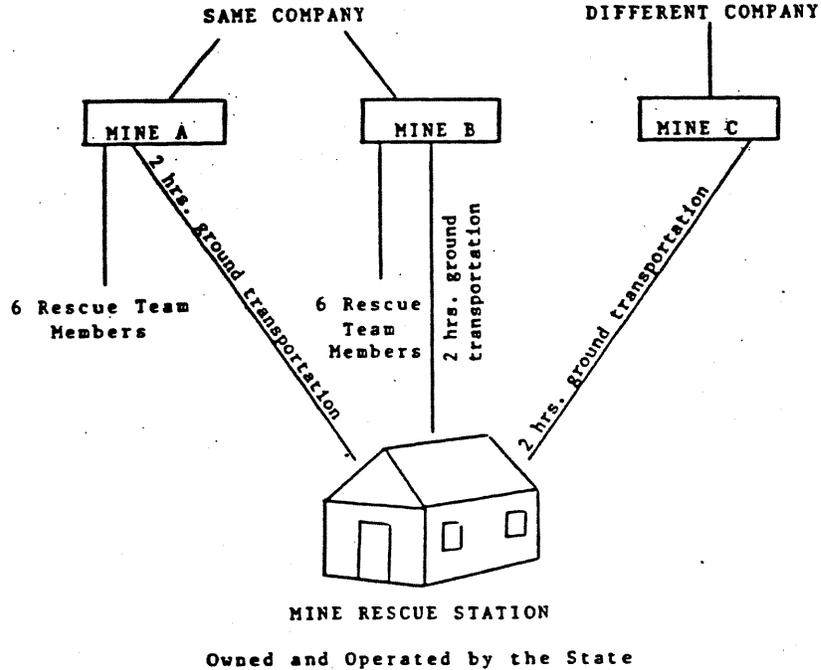
**ANSWER:** No arrangement is necessary because the company has supervisory control over the rescue teams and the rescue equipment.

Example 2

**SITUATION:** Each mine is owned by a different company; however, they jointly own the rescue station and equipment. The two rescue teams are comprised of members from each mine.

**QUESTION:** Should each company enter into an arrangement with the other two companies to satisfy the requirements?

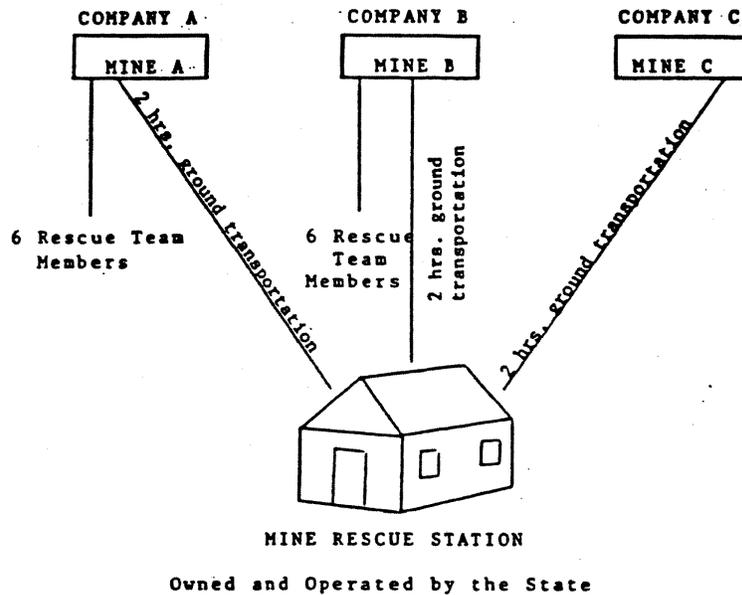
**ANSWER:** Yes, an arrangement must be made between each of the companies.

Example 3

**SITUATION:** The rescue teams from Mine A and B are maintained by the State; however, the State does not have the authority to cause the teams to respond to an emergency. The rescue station and equipment is owned and controlled by the State.

**QUESTION:** Who must Mine C make an arrangement with to provide rescue capability?

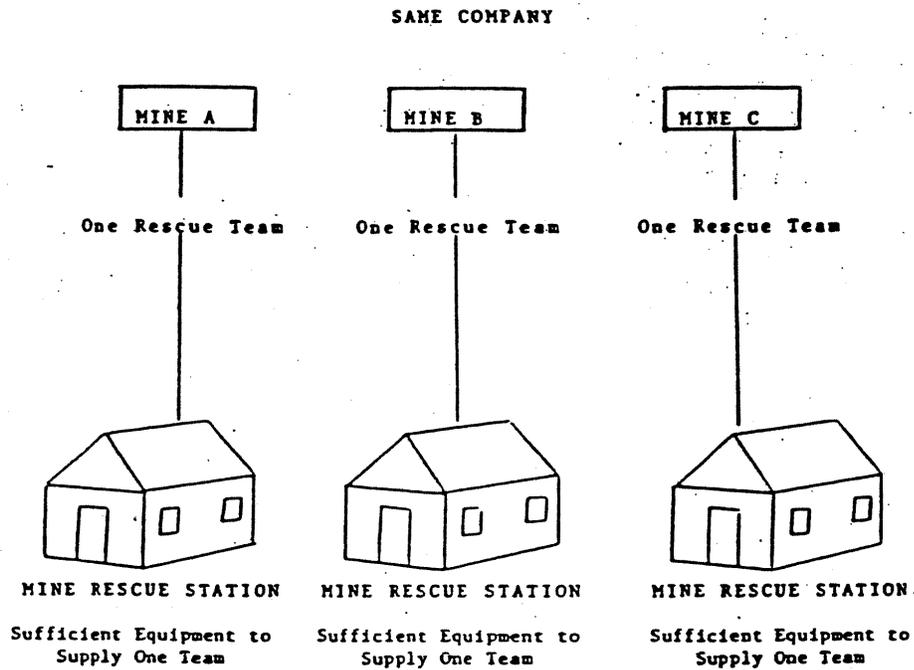
**ANSWER:** Mine C would be required to enter into an agreement with both the State who owns the equipment and the operator of Mines A and B who has supervisory control over the rescue teams. Additionally, the operator of Mines A and B would be required to enter into an agreement with the State to provide the equipment.

Example 4

**SITUATION:** The rescue teams from Mine A and B are maintained by the State. The State has statutory or contracted authority to cause the teams to respond to a mine emergency. The rescue station and equipment are owned by the State.

**QUESTION:** Would all three mines be required to enter into an arrangement with the State?

**ANSWER:** Yes, in this case the operators of each of these mines would be required to enter into an arrangement with the State.

Example 5

**SITUATION:** All three mines are owned by the same company, with a rescue team (6 members) and a rescue station at each mine. Each of these stations are sufficiently equipped for one team such as six breathing apparatuses, one extra O<sub>2</sub> bottle, etc. All three stations are within two hours of ground transportation of each mine.

**QUESTION:** Would this type of situation for rescue stations be acceptable?

**ANSWER:** No, all of the required equipment must be stored at one central location as indicated in the regulations. However, MSHA recognizes that there may be certain circumstances that MSHA would consider under a petition for modification.

PART 50 ACCIDENTS, INJURIES, ILLNESSES, EMPLOYMENT, AND  
COAL PRODUCTION IN MINES

III.50-1 Citations for Failure to Report Under Part 50

An evaluation of operator compliance with reporting requirements under Part 50 shall be made at every regular inspection.

To ensure that the issuance and assessment of citations for failure to report as required by Part 50 is handled uniformly, inspectors will issue a citation for each separate instance of a failure to report an accident, injury or illness, or quarterly employment and production. Each such citation will be subject to a separate penalty.

Inspection personnel should carefully review the degree of negligence associated with all Part 50 citations. Any violation of Part 50 considered to be the result of a high degree of negligence or other unique aggravating circumstances may be referred for special assessment.

Where circumstances indicate that there has been flagrant conduct surrounding a failure to report, such as attempting to conceal the fact that an injury occurred, serious consideration should be given to a reckless disregard negligence evaluation. The facts involved in such a violation should be carefully documented and transmitted to the appropriate District Manager for use in determining whether a recommendation for special assessment is appropriate.

III.50-2 Reporting of Silicosis and Other Pneumoconioses

30 CFR Part 50 requires that operators report each accident, occupational injury, or occupational illness at the mine. An "occupational illness" is defined in 50.2(f) as:

...an illness or disease of a miner which may have resulted from work at a mine or for which an award of compensation is made.

30 CFR 50.20-6(b)(7)(ii) states:  
Code 22 - Dust Disease of the Lungs  
(Pneumoconioses). Examples: silicosis, asbestosis,  
coal worker's pneumoconiosis, and other  
pneumoconioses.

Diagnosis of an "occupational illness or disease" under Part 50 does not automatically mean a disability or impairment for which the miner is eligible for compensation, nor does the Agency intend for an operator's compliance with Part 50 to be equated with an admission of liability for the reported illness or disease. MSHA views a disability as distinguishable from a reportable diagnosis of silicosis or other pneumoconioses. A diagnosis would be reportable to MSHA if there is evidence of exposure coupled with an x-ray reading of 1/0 or above, using the International Labor Office (ILO) classification system. On the other hand, states may require different or additional evidence in determining disability such as a physical examination, lung function test, etc.

MSHA's position is that any medical diagnosis of a dust disease or illness must be reported under Part 50. A medical diagnosis may be made by a miner's personal physician, employer's physician, or a medical expert.

If a chest x-ray for a miner with a history of exposure to silica or other pneumoconiosis-causing dusts is rated at 1/0 or above, utilizing the ILO classification system, it is MSHA's policy that such a finding is a diagnosis of an occupational illness, in the nature of silicosis or other pneumoconiosis and, consequently, reportable to MSHA.

An operator need not report to MSHA within 10 days any chest x-ray result if the operator is actively seeking a more definitive second opinion in a timely manner and has supporting documentation. MSHA will not take enforcement action for exceeding the 10 day reporting requirement in this situation. If a second opinion by a "B" reader substantiates the first diagnosis of 1/0 or above, then the illness must be reported to MSHA.

If the second opinion by a "B" reader does not rate the x-ray at 1/0 or above, using the ILO classification system, MSHA will continue to stay enforcement action if operators seek a third opinion by an additional "B" reader to determine a majority opinion. MSHA will accept this majority opinion as an accurate diagnosis for reporting purposes.

A "B" reader is a physician certified by the Center for Disease Control's (CDC) National Institute for Occupational Safety and Health (NIOSH) to interpret chest radiographs to detect pneumoconiosis using ILO guidelines.

### III.50-3 Part 50 Audit After Fatal Accident

MSHA has the option to conduct a Part 50 reporting audit at a mine where a fatal accident occurs. Factors MSHA will consider in deciding whether to conduct a Part 50 audit after a fatality include the following:

- MSHA received complaints by miners or a miners' representative that reportable accidents were not being reported by the mine operator;
- MSHA otherwise has reason to believe there has been underreporting of accidents at a mine; or

MSHA may also conduct a Part 50 audit after a fatal accident if the mine's accident and injury rates vary substantially from the accident and injury rates for mines of a similar type.

A mine which has been audited within a year preceding a fatal accident need not be audited again, unless the district manager or the Administrator determines otherwise.

### III.50-4 Part 50 Notification, Investigation, Reporting and Recordkeeping Requirements for Independent Contractors

Independent contractors who are performing any of the nine types of services or construction listed under Section 45.3, Part 45 of this Manual, must report accidents, injuries and illnesses under 30 CFR 50.20. In addition, these independent contractors must maintain records of such reports under 30 CFR 50.40; and they must file quarterly employment reports under 30 CFR 50.30. Except as otherwise determined by the district manager, other independent contractors are not required to comply with the above referenced regulatory sections.

Without regard to the type of work being performed, all independent contractors are required to comply with the notification, investigation and preservation of evidence requirements of 30 CFR Sections 50.10, 50.11 and 50.12 respectively, and they are required to comply with 30 CFR 50.41 regarding verification of reports.

To minimize the burden of quarterly employment reporting, for those contractors required to do so, only a single MSHA Form 7000-2 must be completed and filed for any calendar quarter in which a contractor has worked. Only the types of work listed under Paragraph 45.3, Part 45 of this Manual need to be reported. As in the case of mine production operators, the information necessary to complete a Form 7000-2 by an independent contractor is the average number of employees and the total employee hours involved in the work being reported. However, this employment

information must be developed separately for the surface mines and for the underground mines where the work being reported was performed.

In addition, in order to ensure compatibility of MSHA statistics, separate 7000-2 forms are to be used for work performed at metal and nonmetal mines and at coal mines. For work performed at underground mines, this information must be separated for work performed underground and for work performed on the surface of underground mines, and then entered on the appropriate line. For work performed at surface mines, employment information must be separated for the several types of surface mines indicated on the form (e.g., strip, open pit or quarry, auger mine, dredge, etc.), and then entered on the appropriate line. When work being reported on any particular line was performed at more than one site, the required employment information should be computed together.

The independent contractor and the production-operator may coordinate the submission of their quarterly reports so that the production-operator actually submits the report covering the contractor. When this is done, a separate Form 7000-2 must be filed for the operator and for each independent contractor. It should also be remembered that the independent contractor is individually responsible for complying with 30 CFR 50.30. Consequently, if the production-operator fails to submit the separate quarterly employment report covering the independent contractor, that contractor may be cited for a violation of its compliance responsibility.

#### III.50-5 Reporting and Investigating Blocked Passage Through the Tailgate Side of Longwall Mining Operations in Coal Mines

It is MSHA policy to promptly investigate any fall of roof or rib in a coal mine which blocks miners' travel off a longwall through the tailgate entries. Continued mining or any other action that may alter the site of the fall or any related area is not to be permitted until the MSHA's investigation is completed, except as recognized by 30 CFR 50.12.

Maintaining the entries that provide access into and out of longwall face areas is important to miner safety, particularly in the event of life-threatening circumstances. Accordingly, falls which block tailgate entries so that passage out of a longwall panel is limited to one side are to be promptly investigated.

Under 30 CFR Section 50.10, mine operators are required to immediately contact the local MSHA district or subdistrict office if an accident occurs. The term "accident" is defined by 30 CFR Section 50.2(h)(8) to include any unplanned fall that occurs in active workings which impedes passage.

The purpose of this investigation is to evaluate the cause of the fall, including the roof support being used and the conditions that caused it to fail. To conduct a proper evaluation, it is important that the fall and the surrounding area not be disturbed. Therefore, under 30 CFR Section 50.12, mining or any other action that may alter the site of the fall, or the related area, is not to be permitted, except for the reasons identified in 30 CFR Section 50.12.

When a report is received that passage through the tailgate side of a longwall panel is blocked, every attempt should be made to expedite the investigation. To do so, the investigation should begin no later than the end of the shift following the shift on which the fall was reported to MSHA.

#### 50.2 Definitions

Mine operators are required by 30 CFR Part 50 to report each accident, occupational injury, or occupational illness at a mine. A hoisting accident is defined in 50.2(h)(11) as:

Damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with use of the equipment for more than thirty minutes.

This definition covers hoisting equipment in a shaft or slope, such as elevators, cages, skips, slope cars, platforms and mechanical escape facilities, that is intended or used for the transportation of personnel, equipment, or material. Damage to such equipment meeting the definition in 30 CFR 50.2(h)(11) would, therefore, be reportable under 30 CFR 50.10 and 50.20.

50.20 Preparation and Submission of MSHA Form 7000-1  
and

50.30 Preparation and Submission of MSHA Form 7000-2.

The Code of Federal Regulations requires mine operators and independent contractors performing certain types of work activity on mine property to submit reports of injuries, illnesses, and accidents, as defined in 30 CFR 50.2(e), (f), and (h), respectively, and worktime information as discussed in 30 CFR 50.30. Sections 50.20-1 and 50.30-1 contain general instructions for submitting these data on MSHA Forms 7000-1 and 7000-2, respectively.

In an effort to reduce the reporting burden and cost to operators and contractors, MSHA has provided a toll-free number connected to a facsimile machine in Denver. The number is (888) 231-5515. Operators and contractors may submit a facsimile via this number in lieu of mailing the original of MSHA Form 7000-1 or Form 7000-2 to the Office of Injury and Employment Information in Denver, formerly known as the Health and Safety Analysis Center.

Additionally, the toll-free number in Denver may be used to send the second copy (pink copy) of Form 7000-1 containing return-to-duty information. In order to differentiate it from the original, however, the word "**PINK**" must be printed at the top of the copy.

Experience has demonstrated that material prepared in pencil or in blue ink does not transmit legibly. If such forms are transmitted by "fax" and prove to be illegible, the sender will be contacted to resubmit by regular mail. To avoid duplication, however, do not send a copy of the same form through the mail unless requested to do so.

Problems with the receiving facsimile machine in Denver may be addressed by calling (303) 231-5453 during normal work hours. Section 50.20-1 also requires that the first copy (yellow copy) of Form 7000-1 be sent to the appropriate MSHA Coal or Metal and Nonmetal district office. The district offices also have facsimile machines with which to receive this document; however, the numbers are not toll free. A list of these fax machine numbers follows.

Coal Mine Safety and Safety			Metal and Nonmetal Mine and Health District Offices		
1	(717)	826-6207	Northeastern	(412)	772-0260
2	(412)	925-6190	Southeastern	(205)	290-7299
3	(304)	291-4196	North Central	(218)	720-5650
4	(304)	877-3927	South Central	(214)	767-8405
5	(540)	679-1663	Rocky Mountain	(303)	231-5468
6	(606)	437-9988	Western	(707)	447-9816
7	(606)	546-5245			
8	(812)	882-7622			
9	(303)	231-5553			
10	(502)	825-0949			
11	(205)	290-7389			

50.20-3 Criteria - Differences Between Medical Treatment and  
First Aid

The use of prescription medication alone for any treatment other than for an eye injury is not a reportable medical treatment for an occupational injury under Title 30, Code of Federal Regulations, Section 50.20-3. Use of prescription medication for eye injuries remains a reportable treatment under Paragraph 50.20-3(a) (5).

50.30 Preparation and Submission of MSHA Form 7000-2

See 50.20/50.30 above.

Starting in January 1998, mine operators and contractors also have the option to complete and submit MSHA Form 7000-2 to MSHA directly over the Internet through MSHA's homepage (<http://www.msha.gov>) or through the Department of Labor's homepage (<http://www.dol.gov>) under "elaws." To complete MSHA Form 7000-2, follow the instructions provided on the screen.

The system guides mine operators and contractors through the reporting process, taking into consideration the type of reporting operation. The system advises users to print a copy of the completed form for company files. This copy will document compliance with reporting requirements under 30 CFR 50.30. Companies filing electronically will also receive E-Mail confirmation that required information has been received by MSHA.

The system is designed for initial filings submitted for the preceding quarter only. Amended filings that correct information previously filed, or those submitted late, must

continue to be mailed to the Office of Injury and Employment Information (OIEI), P. O. Box 25367, Denver, Colorado, 80225 or faxed toll-free to (888) 231-5515.

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**Part 62 Noise Enforcement Policy****62.1 Operator Noise Exposure Determination**

1. Can I still use the noise monitoring equipment I already have?

Yes, if it meets the criteria listed in Section 62.110(b)(2) which states that a miner's dose determination must:

- be made without adjustment for the use of any hearing protector;
- integrate all sound levels over the appropriate range;
- reflect the miner's full work shift;
- use a 90-dB criterion level and a 5-dB exchange rate; and
- use the A-weighting and slow response instrument settings.

Additional information is in MSHA's "A Guide to Conducting Noise Sampling" which is available from the MSHA web page at <http://www.msha.gov>. Copies were also distributed to mine operators.

2. If I determine, without physically sampling, that a miner's noise exposure equals or exceeds the action level (AL), or exceeds the permissible exposure level (PEL), maximum level, or dual hearing protection level (DHPL), am I still required to notify the miner?

Yes. Such notification is required regardless of the source of information that shows an overexposure. For example, you must provide the miner written notification that his or her exposure equals or exceeds the action level (or exceeds other specified levels) based on the noise level information from the equipment's manufacturer or other source. You must also notify the miner of the corrective actions you will implement.

3. Can I have to satisfy the requirement to notify a miner that his or her exposure exceed the action level (85 dBA) by posting a sign at the entrance to the mine site listing those areas at or above 85 dBA, or do I have to give the notices to each individual miner who is exposed to noise at or above 85 dBA?

Each miner must be provided with individual written notification. This will ensure that all miners are properly notified and informed of any additional precautions necessary to protect their hearing.

4. What is the definition of "miner" for noise monitoring and who does this definition cover?

The noise standard does not include a separate definition of a miner. For purposes of the standard, the definition of "miner" is the same as in Section 3(g) of the Mine Act. It means any individual working in a coal or other mine.

5. A lot of questions have arisen regarding monitoring, and whether or not monitoring is specifically required. Please clarify my responsibilities regarding noise monitoring.

The standard requires that you establish a system of monitoring that evaluates each miner's noise exposure sufficiently to determine continuing compliance with all aspects of the standard. This means that whatever system you establish must keep you aware of when a miner is overexposed to sound levels, whether your exposure determinations are based on noise level information from the manufacturer, sampling conducted by an insurance carrier, or sampling conducted by MSHA.

6. If a miner's noise exposure is assessed using a personal noise dosimeter and does not equal or exceed the action level, how often does he or she have to be monitored?

The noise monitoring provision is performance oriented and does not specify the frequency of monitoring. The standard does require you to establish a system of monitoring that evaluates each miner's noise exposure sufficiently to determine continuing compliance with the standard.

7. When initially assessing miners' noise exposures under Section 62.110, may I use one miner's sampling results as representative of multiple miners who perform the same tasks on the same or another shift, such as operating similar equipment?

Yes, depending on the circumstances, you may monitor areas of the mine or representative job tasks in order to obtain sufficient information to determine compliance with the standard. Monitoring a representative number of the miners operating the same type of equipment is acceptable. However, the monitoring results for one miner operating a piece of equipment may not be consistent with noise exposures for other miners operating similar, but not the same, equipment.

8. If I voluntarily establish a hearing conservation program

and enroll all miners at my mine, will I have to monitor for noise exposure at the action level?

If you can determine that a miner's noise exposure is at or above the action level without monitoring and you notify the miner according to the requirements of 62.110, then specific sampling for action level noise exposure is not necessary. However, notifying the affected miners that their exposures are at or above the action level is still required.

9. Can I cover the requirement for notifying a miner of exposure to excessive noise within 15 days by posting the notice on the bulletin board? How should I ensure that a miner received a copy of the results? Can I require the miner to date, time, and initial the document?

Section 62.110(d) specifically requires that you notify each miner of any overexposure to noise in writing within 15 calendar days. Posting the notification on a bulletin board will not meet this requirement. How you ensure that the miner received the notification is not covered by the standard.

10. How does MSHA expect mine operators to control the noise exposure of maintenance workers or examiners who have varying tasks and do not work at set locations, but travel throughout the mine, plant or mill?

MSHA's experience shows that administrative controls are effective in this situation, but you have the choice of using either engineering or administrative controls, or a combination of both, to reduce the miners' noise exposures. You must use feasible engineering and administrative controls to reduce the miners' exposures to allowable levels. If such controls do not exist or do not reduce the miners' noise exposures to the PEL, an operator must still comply with all other provisions of Part 62.

11. Does this standard eliminate the need for me to have qualified people conduct noise monitoring?

Part 62 does not require you to have persons "qualified" by

MSHA to conduct noise monitoring. However, persons conducting noise monitoring must be knowledgeable of how to measure noise exposures.

12. Will MSHA continue to qualify persons to conduct noise monitoring?

No, but MSHA will continue to conduct noise sampling courses for the industry.

13. What error factors will MSHA use for enforcing the four exposure levels (AL, PEL, DHPL, and maximum level)?

MSHA will continue to use a 2 dBA error factor. MSHA will issue citations for the following noise exposure doses: 66% for AL, 132% for PEL, and 1056% for DHPL.

62.2 Maximum Level

1. Can miners be exposed to sound levels exceeding the maximum level of 115 dBA for any period of time? Will MSHA permit any duration of exposure above 115 dBA before citing a mine operator? When will MSHA cite operators? Is the maximum level a 15-minute average of exposure? Will impact/impulse noise be considered as part of the maximum level?

MSHA will continue to enforce the maximum level in the same manner that it was enforced under its previous noise standards. In most cases MSHA noise exposure determinations will be based on full-shift surveys using a personal noise dosimeter. MSHA may issue a citation if sound levels exceed 117 dBA (115 dBA maximum level + 2 dBA error factor) for at least 30 consecutive seconds. When a miner is exposed to 117 dBA for more than 15 minutes, the 90 dBA PEL is also exceeded. In such cases, the Agency will cite operators for exceeding the 90 dBA PEL rather than for exceeding the maximum level if the operator has not installed and/or maintained all feasible controls.

The noise standard does not include a separate standard for impact/impulse noise. MSHA stated in the preamble to the standard that impact/impulse noise will be integrated along with continuous noise in determining a miner's exposure to the maximum level as well as to all other required levels.

Sampling of an individual miner's exposure in the hearing zone will be conducted with a noise dosimeter and a sound level meter using the A-weighting slow response setting for determining compliance with the maximum level.

2. What am I required to do if I exceed the maximum level?

As with exposure exceeding the 90 dBA PEL, if you exceed the maximum level you are required to use all feasible engineering and administrative controls, provide and ensure the use of hearing protection, enroll affected miners in an HCP, post any administrative controls that are being used on the mine bulletin board, and provide copies of those administrative controls to affected miners. All requirements of Section 62.130 apply.

### 62.3 Noise Controls

1. Where I have multiple pieces of the same type of equipment, how will MSHA address the other pieces while the first piece is being equipped with noise controls?

Compliance and feasibility are determined on a case-by-case basis. MSHA intends to give operators a reasonable amount of time to put controls on equipment. In some cases this may require a prolonged period of time, while in other instances it may not.

2. If a doctor fits a miner with hearing protection will this be permitted in lieu of installing expensive noise controls?

No. Personal hearing protection is not considered a noise control.

3. What if I have changed administrative controls and MSHA determines a miner is being overexposed?

If MSHA sampling shows that a miner is overexposed to noise and the administrative and/or engineering controls you have installed are not effective, MSHA will determine if additional feasible controls are available that would be effective. If so, a citation will be issued.

4. Will I be issued a 104(b) order for failure to install engineering and administrative controls which MSHA believes are feasible?

MSHA will first issue a 104(a) citation for failure to install feasible controls when required to do so under Section 62.130. If during a compliance inspection, MSHA finds that you failed to abate the citation within the specified time period, then MSHA may issue a 104(b) order.

5. What will MSHA do in a situation where I have determined that a miner is overexposed to noise and I am in the process of installing controls?

MSHA will evaluate your efforts to attain compliance and a citation may not be warranted.

6. Will MSHA allow me to bring onto mine property older

equipment that causes a miner's noise exposure to exceed the PEL?

The noise standard does not prevent you from bringing any equipment onto your property. However, the noise standard does require you to use both feasible engineering and administrative controls, if necessary, to reduce a miner's exposure to the PEL.

7. How will MSHA address labor/management agreements that affect the use of administrative controls?

MSHA policy regarding labor/management agreements will not be affected by the new noise standard.

62.4 Feasibility of Engineering and Administrative Controls

1. Will MSHA continue to apply its metal and nonmetal noise decisions as decided by the Federal Mine Safety and Health Review Commission as the basis for how it will determine feasibility of engineering controls?

Yes, the noise decisions will continue to be applicable to feasibility of controls.

2. In enforcement, how does MSHA apply the noise case factors?

Consistent with the Commission decisions, in enforcing the noise standard, MSHA will continue to consider three factors in determining whether engineering controls are feasible at a particular mine. These factors are: (a) the nature and extent of the exposure; (b) the demonstrated effectiveness of available technology; and (c) whether the committed resources are wholly out of proportion to the expected results.

2(a). The nature and extent of the exposure.

In considering the nature and extent of exposure as a factor in determining whether controls are feasible, MSHA will consider the following components: source(s) of noise, level (dose), and duration of exposure. For example, the exposure of miners, such as percussive drillers or bulldozer operators, to high levels of noise on a continuous or daily basis would require the application of feasible controls.

2(b). The demonstrated effectiveness of available technology.

MSHA intends to continue its longstanding policy currently in effect for metal and nonmetal mine operators of determining what constitutes an effective control, i.e., where a control or a combination of controls could achieve at least a 3 dBA reduction in noise exposure. This represents a 50% reduction in sound energy. Where a single engineering control does not provide at least a 3 dBA reduction in a miner's noise exposure, you must consider the expected level of reduction from a combination of technologically available controls. We have many years of

experience in achieving significant reduction in sound levels on most pieces of equipment in metal and nonmetal mines. Working together with metal and nonmetal operators and equipment manufacturers, MSHA has made great strides in significantly reducing noise exposure through the use of available noise controls.

MSHA has also gathered information on effective noise controls for coal mining equipment. The Office of Technical Support works closely with the inspectorate in providing information on effective noise controls. MSHA is available to assist operators and miners and has made available a comprehensive list of equipment manufacturers, suppliers of acoustical material and links to other Internet sites where lists of noise consultants may be obtained.

2(c). Whether the committed resources are wholly out of proportion to the expected results.

In considering this factor, MSHA will determine whether the cost of abatement is out of proportion to the expected reduction in noise exposure. If a control is extremely costly for the operator but the expected reduction in noise exposure is minimal, MSHA may determine that it is not economically feasible for you to install the control. For example, MSHA will not require rod and ball mills to be enclosed at costs that could reach hundreds of thousands of dollars. However, MSHA may require that control rooms and other practical controls be implemented to reduce noise exposure.

3(a). With respect to determining feasibility of engineering and administrative controls, does the "nature and extent of the overexposure" mean that controls which would be deemed feasible where noise exposures are 105 dBA might not be deemed feasible where the noise exposure is only 95 dBA? Or, does it mean that the feasibility of engineering controls may depend on how many miners are overexposed?

Engineering and administrative controls that are feasible to reduce a miner's noise exposure at a very high level will be considered feasible at lower levels above the PEL as well. For example, controls that are determined to be feasible where noise exposures are 105 dBA will also be considered feasible where noise exposures are 95 dBA. Because the noise standard is based on each miner's personal exposure to noise, feasibility does not depend on the number of miners overexposed.

3(b). Does the phrase "the demonstrated effectiveness of

available technology" mean anything more than that a control or combination of controls must achieve at least a 3 dBA noise reduction in order to be deemed technologically feasible?

The phrase means that a single engineering control or a combination of controls which is likely to achieve at least a 3 dBA reduction in a miner's noise exposure is technologically feasible. In addition, a control or combination of controls that brings noise exposure down to compliance levels, but does not achieve a 3 dBA reduction,

may also be considered feasible. MSHA will, however, consider any adverse effects that the controls may have on the health and safety of the miner.

3(c). Does MSHA have some threshold of proportionality beyond which a control is deemed infeasible? Is there a value or range of values to guide the determination of whether costs are "wholly out of proportion to the expected results"? Does it depend on how many miners the reduction applies to?

Although neither MSHA nor the Commission has placed a value on the cost of a control per decibel of reduction or the number of miners affected, MSHA will not require an irrational expenditure to achieve a minimal noise reduction.

4. How will MSHA determine the feasibility of administrative controls?

In determining the feasibility of administrative controls, MSHA will consider the same three factors that the Commission outlined for determining the feasibility of engineering controls, that is, nature and extent of the exposure, demonstrated effectiveness of available technology, and whether resources are wholly out of proportion to expected results. For example, MSHA will not require you to hire additional workers in order to "exhaust" all feasible administrative controls.

5. Will MSHA require an operator to use feasible engineering controls before implementing administrative controls?

No. A mine operator can choose to use either feasible engineering controls or feasible administrative controls, or a combination of both, as long as the controls reduce the miner's noise exposures to the PEL. When administrative controls are used, the mine operator must post the procedures for the controls and provide a copy to the affected miners.

62.5 P-Action Code

## 1. How is the P-action code used?

The P-action code is a type of action code used by an MSHA inspector in the entering of sampling data, collected from health surveys, on forms used to transfer required data to MSHA's health samples data base.

There are two scenarios involving a miner's overexposure to noise where the use of a P-action code would be appropriate.

In the first scenario, MSHA determines that a miner's full-shift exposure exceeded the PEL under Section 62.130(a) and (b). MSHA also determines that: (1) all feasible engineering and administrative controls have been used to reduce the miner's exposure to the PEL; (2) all affected miners have been enrolled in a Hearing Conservation Program in accordance with Section 62.150 which requires the mine operator to monitor under Section 62.110, provide and require the use of hearing protection under Section 62.160, provide audiometric testing under Sections 62.170 through 62.175, provide training under Section 62.180, and keep records under Section 62.190; and (3) if administrative controls are being used, the mine operator has posted on the mine bulletin board and provided affected miners with copies of any procedures used to reduce miners' exposure. In this scenario, no citation would be issued but a P-action code would be used as an indication that there were circumstances leading to the miner's overexposure. These circumstances could include the job or occupation that the miner was performing, the area where the miner worked, and the equipment that the miner was using or that was a source of the overexposure.

In the second scenario, MSHA determines that a miner's full-shift exposure exceeded the PEL under Section 62.130(a) and (b). However, unlike the first scenario, MSHA also determines that the mine operator failed to comply with the requirements of Section 62.130. In this scenario, a citation would be issued with an abatement period for the violation because the mine operator failed to: (1) use all feasible engineering and administrative controls to reduce the miner's exposure to the PEL; or (2)

enroll all affected miners in a Hearing Conservation Program that complies with each requirement of Section 62.150; or (3) if administrative controls are being used, post on the mine bulletin board and provide affected miners with copies of any procedures used to reduce miners' exposure. If the violation is abated but the miner's exposure continues to exceed the PEL, the citation would be terminated and a P-action code would be used.

MSHA reviews and re-evaluates situations where the P-action code was used to see whether feasibility conditions have changed. If new technology becomes available that could affect feasibility determinations, MSHA will notify the mining community of the new technology by posting information about it on the MSHA web site. Thereafter, the local MSHA inspector will notify individual mine operators about the new technology if, at their mines, the P-action code was used for which the new technology is relevant. Any failure by MSHA to notify, however, does not relieve the mine operators from their responsibility to implement feasible controls whenever those controls become available.

MSHA will make a case-by-case determination of whether implementation of the new technology is feasible for each individual mine where the P-action code was used due to a noise source to which the new technology applies. There may be reasons why the new technology may not be deemed feasible for a particular mine even though it is effective elsewhere. For example, because of the nature of the operation and the miners' activities, the new engineering control may not be capable of achieving a 3 dBA reduction in the miners' noise exposure at that particular facility, even if it has been shown to reduce the noise level from a particular piece of equipment by 3 dBA.

If MSHA deems the new technology to be feasible for the particular mine, the operator will be so informed and expected to implement it within a reasonable period of time to be determined by MSHA on a case-by-case basis. If the operator installs the new technology and still does not achieve the PEL, a citation would not be issued. If the operator does not do so, and a resample of the occupation determines a citeable overexposure still exists, a citation will be issued for failing to utilize all feasible controls to achieve the PEL. Of course, there would be no citation issued if the operator reduces miners' exposures to the PEL through the use of any combination of engineering and/or administrative controls, even if they differ from the new technology identified by MSHA.

2. How does MSHA expect that new technology will be developed?

MSHA's Office of Technical Support regularly reviews

research on new control technology. In addition, MSHA expects the mining industry and equipment manufacturers to work together to develop new or improved noise reduction technology. MSHA will identify and disseminate information about new controls as we become aware of them.

62.6 Hearing Conservation Programs

1. Once a miner is enrolled in a hearing conservation program, is there a procedure for removing him or her from the program?

After a miner is enrolled in an HCP, the miner's noise exposure has been reduced to below the AL, and all requirements of Section 62.150 related to the HCP have been met, the miner can be removed from the program.

2. How will MSHA evaluate the effectiveness of my HCP?

Effectiveness will be based on factors such as the incidence of miners experiencing a Standard Threshold Shift (STS) or hearing loss as a result of noise exposures while working at the mine.

62.7 Personal Hearing Protection

1. How will MSHA enforce the requirements for hearing protectors, and do the requirements for mandatory use of hearing protectors or dual hearing protectors require a miner to wear the hearing protector(s) continually throughout the entire shift?

If the miner is exposed to sound levels at or above a  $TWA_8$  of 85 dBA (the action level) and up to a  $TWA_8$  of 90 dBA (the PEL), the use of hearing protectors is optional. The use of hearing protectors is required when a miner is exposed to noise at or above the action level and the miner has incurred a standard threshold shift or more than 6 months will pass before the miner can take a baseline audiogram. If exposure is above a  $TWA_8$  of 90 dBA (the PEL), the operator must first use any combination of engineering and administrative controls that are feasible to lower the miner's exposure to a  $TWA_8$  of 90 dBA. In addition to installation of feasible engineering and administrative controls, hearing protectors must be worn by a miner until the miner's exposure is reduced to the PEL, so long as the equipment responsible for the overexposure is operating. If exposure is above a  $TWA_8$  of 105 dBA, the operator must also provide and ensure the use of dual hearing protectors.

If a miner is not wearing the required hearing protector(s) in these circumstances, MSHA will issue a citation to the mine operator.

MSHA notes that hearing protectors do not necessarily need to be worn for an entire shift. For example, MSHA will not require hearing protectors to be worn in quiet places, or when the miner is no longer exposed to the excessive noise source(s) when the equipment is not running. Under those circumstances, MSHA will not issue a citation to the mine operator when a miner is not wearing a hearing protector.

This answer applies to dual hearing protection as well.

2. Must hearing protection devices have a noise reduction rating (NRR) to be acceptable?

Either an NRR rating or another scientifically accepted indicator of noise reduction is required.

3. Do miners who wear hearing aids also have to wear Hearing Protection Devices (HPDs)?

Yes. Hearing aids are not accepted as HPDs. MSHA's definition of a hearing protection device is defined as any device or material, capable of being worn on the head or in the ear canal that is sold wholly or in part on the basis of its ability to reduce the level of sound entering the ear. Not all devices or materials that are inserted in or that cover the ear to reduce the noise exposure, for example a hearing aid or cotton, meet the definition of a hearing protector under the standard.

4. Will deaf and other hearing impaired miners have to wear HPDs and do I have to reduce their noise exposure?

Yes, all provisions of the noise standard apply.

5. Will I be permitted to use noise canceling ear muffs?

You will be permitted to use noise canceling ear muffs for hearing protection, if they have a Noise Reduction Rating or another scientifically accepted indicator of noise reduction, but you cannot use them as an engineering control. In addition, they must be permissible to be used in by the last open crosscut in underground coal mines and in certain gassy metal and nonmetal mines.

6. What action will MSHA take if a miner for whom I provided hearing protection under my HCP is observed not wearing the HPD where the noise exposure exceeds the PEL?

You have the responsibility to make certain that required personal hearing protection is worn. If MSHA determines that a miner is overexposed to noise in this circumstance a citation will be issued.

7. Will a miner have to wear dual hearing protection if he or she leaves the area where dual hearing protection is required?

No.

8. If a miner does not participate in audiometric testing, does he or she have to wear hearing protection if his or her exposure is between 85 dBA and 90 dBA?

No. In this circumstance it would not be possible to determine if the person had a standard threshold shift. However, if the operator became aware that the individual had a standard threshold shift, for example, a letter from the miner's personal doctor, the miner must wear hearing protection.

9. Is a miner required to wear dual hearing protection if he or she has a medical condition (for example, ear infection) that prevents him or her from wearing personal hearing protectors?

Section 62.140 of the standard requires a miner to wear dual hearing protection when working in an environment where dual hearing protection is required. For miners with a medical condition such as an ear infection, Section 62.160(a)(5) requires that the mine operator allow the miner to choose a different hearing protector.

10. What about miners who wear eyeglasses and are required to wear ear muff type hearing protection?

The standard does not exempt from its requirements miners who wear eyeglasses. MSHA believes that the proper selection and combination of hearing protectors should alleviate this concern. For example, newer models of ear muffs, which are readily available, are specifically designed to be used with safety glasses. Other models which were specifically designed for use with hard hats or welding shields are also readily available.

11. Are personal hearing protectors required for anyone traveling or working in areas above 90 dBA or just for those employees who are known to be overexposed?

All miners must wear hearing protection when the miner's full-shift noise dose exceeds the PEL or Dual Hearing Protection Level (DHPL); when the maximum level exposure exceeds 117 dBA; or, when the full-shift noise dose is between the AL and PEL and the miner has incurred an STS or it will be longer than six months to obtain a baseline audiogram. When such exposures occur, miners must wear their hearing protection whenever they are exposed to sound levels that could contribute to their dose (i.e., greater than or equal to 80 dBA for the AL, and greater than or equal to 90 dBA for the PEL and DHPL).



62.8 Audiometric Testing

1. How will MSHA enforce the 30-day time frame in Section 62.172(a)(4) in which the operator must obtain the results of hearing data from testing firms?

Although MSHA expects mine operators to comply with the 30-day time frame, if the operator can demonstrate that compliance was beyond its reasonable control, MSHA may allow the operator more time to obtain the audiometric test results. MSHA will make this determination on a case-by-case basis. Compliance is not beyond the operator's control when the physician, audiologist, or qualified technician is directly employed by the mine operator.

2. What factors should a physician or audiologist consider when making a determination that hearing loss is neither work-related nor aggravated by occupational noise exposure under the reporting requirements for reportable hearing loss?

Mine operators should inform physicians and audiologists to routinely ask about a miner's employment history and both occupational and non-occupational noise exposure in order to make a well-informed diagnosis. If there is evidence of non-occupational causes for the hearing loss, the physician or audiologist should look beyond the work place for the cause of the hearing loss. Unless the physician or audiologist can determine that the miner's hearing loss is neither work-related nor aggravated by occupational noise exposure, the mine operator must report the reportable hearing loss.

3. Will I have to make individual contact with miners about voluntary audiograms once I have implemented a hearing conservation program?

You must inform miners that audiograms are available. The standard does not specify how the miners are to be informed. You must offer miners the opportunity for audiometric testing of the miner's hearing sensitivity for the purpose of establishing a valid baseline audiogram to compare with subsequent annual audiograms. Posting of audiometric test dates and locations in areas where all affected miners can see them will be acceptable.

4. Can I use existing baseline audiograms?

Yes, you may use a current audiogram as a baseline audiogram for purposes of complying with Section 62.170(a) of the standard if it meets the test procedures specified in Section 62.171.

5. Can I wait a full year when using mobile test vans to get audiometric testing completed?

Section 62.170(a)(1) of the standard requires you to offer audiometric testing to miners within six months of their enrollment in your HCP. If a mobile test van is used, you are allowed up to 12 months from the miner's enrollment in your HCP to offer audiometric testing. However, you should schedule baseline audiometric testing as soon as possible after miners are enrolled in your HCP. Up to 12 months is allowed for those situations where getting access to a mobile testing facility is not possible during the initial six months.

6. Is a quiet period required prior to audiometric tests other than the baseline?

No, it is the mine operator's choice whether to implement a quiet period for tests other than the original baseline.

7. Does an audiologist or physician have to be present in the mobile van during audiograms?

No, but he or she must be directing or supervising the work of the qualified technician.

8. Must a new baseline be established for a miner who was previously enrolled in an HCP, was subsequently laid off from work for more than 12 months, and is called back to work at the same mine?

No, you may either use the prior baseline audiogram or establish a new baseline.

9. If a miner leaves my mine because I close the mine and takes a job at a different mine, can the new mine operator use the miner's last audiometric test as a baseline for that miner?

Section 62.190(c)(2) requires that a successor mine operator use the baseline audiogram, or revised baseline audiogram, as appropriate, obtained by the original mine operator to determine the existence of a standard threshold shift or reportable hearing loss. If the second mine where the miner is employed is owned by the same company, the

operator of that mine must use the existing audiometric test record. If the mine is owned by a different company, the operator may choose to use the miner's existing audiometric test record if it meets the test procedures in Section 62.171, or the operator can establish a new baseline.

10. If an employee declined an audiogram when initially offered, but then changes his or her mind at a later date, do I have to provide the audiogram?

Yes, if the miner is still enrolled in a hearing conservation program. You would then have six months (up to 12 months if a mobile test van is used) from the date the miner opted back into the audiometric testing program to have the test conducted.

11. Must an audiogram of a miner who normally wears a hearing aid be conducted with or without the hearing aid?

It must be conducted without the hearing aid. The audiogram must determine the miner's current hearing ability without the use of the hearing aid.

12. Are audiograms conducted pursuant to OSHA's Hearing Conservation Amendment fully acceptable under MSHA's new standard?

Yes, they are.

13. Who pays for an evaluation or referral when a miner is referred to a physician for an evaluation and/or treatment due to a medical pathology of the ear prior to the mandatory audiogram being given, but the miner is in a Hearing Conservation Program?

If the physician believes that the medical pathology is due to workplace noise exposure or the wearing of hearing protectors while at the mine, then the mine operator has to pay for the evaluation or referral. On the other hand, if the physician believes that the medical pathology is not due to workplace noise exposure or the wearing of hearing protectors while at the mine, then the mine operator is not responsible for paying for the evaluation or referral. Whether the mine operator is responsible for paying for the

evaluation or referral should be made clear to the miner.

62.9 Audiometric Test Records

1. I own multiple mines under the same company name and each mine has a separate MSHA ID number. If I close one mine and transfer the miners to a different mine within my company, what happens to the audiometric test records?

If the mine to which you transferred the miners is owned by the same company, you must use the existing audiometric test records. In addition, you must maintain the audiometric test records for the duration of the affected miner's employment, plus at least six months.

2. What if a miner quits my mine and returns five months later requesting copies of his or her records?

You must provide him or her a copy of the audiometric test records. Section 62.171(c) requires that you retain audiometric test records for the duration of the affected miner's employment, plus at least six months. In addition, Section 62.190(a)(3) gives the former miners access to records which indicate their own exposure.

3. What if a former miner has not been employed at my mine for the past eight months, and he or she requests a copy of his or her audiometric test records from me?

You are only required to maintain audiometric test records for the duration of the affected miner's employment, plus at least six months. However, if you still have the record, it should be provided to the miner upon request.

62.10 Hearing Loss

1. A miner's audiometric records for a company show no hearing loss. The miner quits the mine and goes to work for another company and later takes an audiometric test with the new company which shows a reportable hearing loss. What are the previous company's responsibilities under Part 62?

The previous company does not have any responsibilities regarding this miner's hearing loss under Part 62.

However, the previous company may have responsibilities for workers' compensation claims under State law.

2. The standard defines a reportable hearing loss as a 25 dB shift from the employee's baseline audiogram or revised baseline audiogram. What happens if a worker has successive 10-dB shifts with revision of the baseline? Is it possible that a 25 dB shift would never be identified? Could a worker have progressive hearing loss well above 25 dB and this not be a reportable event?

The definition of "reportable hearing loss" specifies that only an original baseline or a revised baseline audiogram which shows a significant improvement in hearing are to be used for reporting purposes.

3. How should I deal with hearing loss due to aging?

Tables 62-3 and 62-4 of the standard include correction factors for both males and females. However, any such adjustment must be made to both the baseline and annual audiograms.

4. Must I still report hearing loss diagnosed by a physician or for which compensation has been awarded?

Yes, it is required to be reported under 30 CFR Part 50.

5. When and how soon will I have to report a hearing loss under 30 CFR Part 50?

All hearing loss, including hearing loss diagnosed by a physician, or for which compensation has been awarded is reportable under Part 50 within 10 working days from when

the operator becomes aware of the hearing loss, diagnosis of hearing loss, or award of compensation.

62.11 Training

1. Must I pay miners for the training required once they are enrolled in a hearing conservation program?

Yes.

2. I plan to have my audiometric testing service provider conduct the required training. Will MSHA accept their certification that the training was conducted?

No. Mine operators must certify that the training was provided under Section 62.180(b). However, the audiometric test provider can conduct the training.

3. Has MSHA developed a generic training program to assist me in complying with the requirements of a hearing conservation program?

Yes. MSHA developed a video that, when shown to miners enrolled in an HCP will meet the training requirements of Section 62.180. This video is available to the industry through the National Mine Health and Safety Academy.

4. Will MSHA provide me with a guide to set up a noise training program?

In addition to a training video, training materials related to noise are available through the National Mine Health and Safety Academy and from various sources including the National Institute for Occupational Safety and Health and through the Internet.

MSHA's web site at <http://www.msha.gov> has a section on noise that contains links to several organizations that can provide useful information on evaluating noise exposures, controlling sound levels, and hearing testing and conservation including:

- National Institute for Occupational Safety and Health
- Occupational Safety and Health Administration
- American Conference of Governmental Industrial Hygienists
- American Industrial Hygiene Association
- American Speech-Language-Hearing Association

- Council for Accreditation in Occupational Hearing Conservation
- National Council of Acoustical Consultants
- National Hearing Conservation Association

5. Can any or all of the Section 62.180 noise training requirements be included with 30 CFR Parts 46 and 48 training requirements?

Yes, as long as all required elements of Parts 46, 48, and 62 are covered.

6. How will MSHA expect me to make audiometric testing records available to MSHA personnel?

Records do not need to be provided immediately to authorized representatives of the Secretaries of Labor and Health and Human Services. Authorized representatives of the Secretaries must have access to records within a reasonable amount of time that does not hinder the authorized representatives' conduct of business. In most cases MSHA expects that this will be no longer than one business day.

7. What is MSHA's definition of a "successor operator?"

A successor operator is an operator who has taken over a mine from another company. The transfer of HCP, audiometric testing and training records applies.

62.12 MSHA Monitoring

1. Will MSHA continue to perform noise monitoring under the new standard?

Yes. For example, during mandatory mine inspections and technical noise investigations, MSHA will continue to evaluate miners' noise exposures to ensure the operator's compliance with the noise standard. Whether an operator's system of monitoring is effective will be based on how well the monitoring system protects miners. MSHA intends to evaluate the effectiveness of a mine operator's monitoring system by how well the system achieves the specified goals of the standard. Overexposure may indicate deficiencies in the mine operator's noise monitoring system and may result in close scrutiny of the program by MSHA.

2. How will MSHA measure the nature and extent of potential overexposure to noise at a particular mining operation?

MSHA will measure the nature and extent of noise exposure at a particular mine using a personal noise dosimeter. Personal noise dosimeters are designed to measure a miner's personal noise exposure and shall be worn over the course of a full shift to get an accurate picture of the employee's noise exposure. Personal noise dosimeter results can show whether or not a miner's noise exposure exceeds the PEL.

62.13 Citations and Orders

1(a). If noise is "emanating" from one piece of equipment and the result is overexposure to more than one miner, will MSHA issue separate citations for each miner?

If there is a single noise source causing an overexposure to numerous miners and its control would bring all exposed miners into compliance, then only one citation will be issued, provided all of the other requirements of the standard are met. The total number of miners overexposed will be indicated on a single citation. For example, one citation will be issued if an air track drill exposes both the driller and the drill helper to similar noise exposures above the PEL with the number of affected miners indicated on the citation.

1(b). How will MSHA address situations where multiple machines or pieces of equipment are the source of the overexposure?

The operator will be cited separately for each overexposed miner. For example, at mills and preparation plants, where there are multiple noise sources, such as chutes, crushers, and screens, separate citations will be issued for each miner found to be overexposed. Likewise, at surface and underground mines where there are multiple noise sources such as dozers, loaders, haul trucks, etc., separate citations will be issued for each miner found to be overexposed.

2. There are many provisions of the standard, which, if violated, could result in a citation. (Example: I used the wrong threshold setting on a miner's personal noise dosimeter when monitoring his/her exposure.) Will MSHA cite violations of such provisions?

For each miner found overexposed, a single citation of either Sections 62.120, 62.130, or 62.140 will be issued with all other Part 62 provisions violated grouped as part of the citation. For example, if a miner's exposure exceeds the PEL and you failed to provide training and offer audiometric testing, a single citation of Section 62.130 will be issued and provisions of the HCP that were violated will be stated in the body of the citation. Where a citation is pending abatement by either retiring or replacing a piece of equipment that is the source of noise, failure to maintain any controls implemented or to comply

with requirements of an HCP will result in a 104(b) order or a 104(a) citation. At a mine where a P-action code was used, an operator must continue to abide by all of the requirements of 30 CFR Part 62, including provisions of an HCP. Failure to comply with any of the requirements of 30 CFR Part 62 will result in a separate citation for each miner affected. For example, if three miners exposed to the noise generated from a single piece of equipment, where it

was determined all feasible controls have been implemented, are observed not wearing hearing protection, three separate citations will be issued.

3. How will MSHA determine if an overexposure under the new standard is a significant and substantial (S&S) violation?

If miners are overexposed to the PEL, a citation will not be S&S if you provide miners with proper hearing protection and it is being worn. However, a citation will be S&S if proper hearing protection is not worn by miners.

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**PART 100 CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES**

MSHA will periodically review its assessment policy to promote the effectiveness of the civil penalty assessment program. Headquarters representatives from the Office of Assessments, Accountability, Special Enforcement and Investigations (OAASEI), Coal Mine Safety and Health (Coal), and Metal and Nonmetal Mine Safety and Health (Metal/Nonmetal) will conduct the reviews.

100.3 Determination of Penalty Amount; Regular Assessment

The penalty amount for a regular assessment is computer-generated utilizing the Part 100 point system.

100.3(b) Appropriateness of the Penalty to the Size of the Operator's Business

The primary source of size data is MSHA's Information Technology Center (ITC). The ITC maintains these data as reported by mine operators and contractors on the Quarterly Mine Employment and Coal Production Report (MSHA Form 7000-2). The business size calculations are based on production/employment during the calendar year preceding the occurrence date of the violation. When no data are available from the ITC, the secondary source of size data is an estimate of the average daily tons produced or hours worked. This estimate is obtained from the information entered into the MSHA Standardized Information System (MSIS) from the Mine Information Form by the enforcement office responsible for inspecting the mine and is converted to an annual estimate.

100.3(c) History of Previous Violations

Overall history is based on the number of citations/orders issued to the mine operator at the applicable mine that became final orders of the Federal Mine Safety and Health Review Commission (Commission) in the 15 months preceding the occurrence date of the violation being assessed. For assessment purposes, this 15-month period is defined as ending the day before the date the citation or order occurred, and beginning on the day 15 months prior to the date the citation or order occurred. For example: the 15-month period used to calculate history for a violation that occurred on July 16, 2012, would be April 16, 2011, through July 15, 2012. If the day 15 months prior does not exist (e.g. the 31<sup>st</sup>), the last day of that month is used.

Repeat violation history is based on the number of repeat violations of the same citable provision of a standard that became final orders of the Commission in the 15-month period preceding the occurrence of a violation. The "same citable provision of a standard" means that exact section of either 30 C.F.R. or the Mine Act was previously cited. For example, a previous violation of 30 C.F.R. 75.213(a)(1) is not counted as a repeat for a violation of 30 C.F. R. 75.213 (a)(2), although they are both violations of 30 C.F.R 75.213.

For production operators, assessment history is based on Violations per Inspection Day (VPID). Inspection days are derived by totaling the MSHA on-site inspection hours entered by Authorized Representatives of the Secretary (AR) for certain inspection activities and task codes and dividing by five. A remainder amount greater than zero increases the count by one. All of the inspectors' time at the mine site is included when calculating inspection days. Travel time to and from the mines is not included.

The following list shows the types of MSHA inspection activities that are counted in the operators' inspection day counts. MSHA Supervisor and Inspector Trainee hours are not counted.

- E01 Regular Safety and Health Inspection
- E02 103(i) Spot Inspection
- E03 103(g) Written Notification Hazard Complaint Inspection
- E04 Verbal Hazard Complaint Inspection
- E06 Fatal Accident Investigation
- E07 Non-Fatal Accident Investigation
- E08 Non-Injury Accident Investigation
- E15 Compliance Follow-up Inspection
- E16 Spot Inspection
- E17 Special Emphasis Programs
- E18 Shaft, Slope or Major Construction Spot Inspection
- E19 Electrical Technical Investigation
- E20 Roof Control Technical Investigation
- E21 Ventilation Technical Investigation
- E22 Health Technical Investigation
- E23 Impoundment Spot Inspection
- E24 Other Technical Compliance Investigations
- E25 Part 50 Audit
- E27 Attempted Inspection (Denial of Entry)
- E28 Mine Idle Activity
- E33 Non-Chargeable Accident Investigation

Assessment history for independent contractors is based on total violation counts.

100.3(f) Demonstrated Good Faith of the Operator in Abating the Violation

A 10 percent reduction in the base penalty amount of a regular assessment is granted for timely abatement of a citation issued under Section 104(a) or 104(d) of the Mine Act. The 10 percent reduction does not apply to any orders, citations issued in conjunction with orders, or citations issued for violations of the Mine Act.

Where a citation is assessed prior to being terminated, the 10 percent reduction will initially be granted. Should a 104(b) order subsequently be issued, an amended proposed assessment will be issued.

100.3(h) Effect of the Civil Penalty on the Operator's Ability to Continue in Business

Within 30 days of receipt of a proposed assessment, an operator may submit a written request to the District Manager for review of its financial status. The request should include an explanation of how payment of the civil penalty would affect the operator's ability to continue in business. Upon receipt of such request, MSHA will suspend processing of the case until a determination is made as to whether a financial reduction is warranted. The District Manager will advise the operator to submit complete financial information including tax returns, income statements, and balance sheets for the most recent 2-year period.

The District Manager will forward this information to the Office of Assessments, Accountability, Special Enforcement and Investigations with a memorandum outlining any additional information and comments concerning the operator's financial condition and compliance history.

The OAASEI will review the submitted information, the operator's outstanding civil penalties and payment history, and decide whether any penalty adjustments will be made.

The OAASEI will notify the operator of the final decision via certified mail or equivalent. Upon receipt of the decision, the operator will have 30 days to either pay the proposed assessment or notify MSHA in writing of an intention to contest the proposed penalty.



100.5 Determination of Penalty; Special Assessment

Special assessment is the process for determining an appropriate civil penalty without using the penalty tables in 30 CFR 100.3.

**Special assessment is mandatory** for the following types of violations.

- Violations for which the daily penalty has been invoked under Section 110(b) of the Mine Act
- Violations cited to miners for smoking or carrying smoking materials under Section 110(g) of the Mine Act
- Flagrant violations as defined in Section 8 of the Mine Improvement and New Emergency Response Act of 2006 (MINER Act)
- Violations involving discrimination under Section 105(c) of the Mine Act and violations involving personal liability under Section 110(c) of the Mine Act.

District Managers may recommend any other violation for special assessment if circumstances warrant.

The following violations are required to be **reviewed** for special assessment.

- Section 104(a) citations issued for violations of Sections 103(a), 103(f), 103(j), 103(k), 104(b), 104(d), 104(e), 104(g)(1), 107(a), and 110(j) of the Mine Act
- violations that contributed to a fatal or serious injury
- violations of the standards identified as "Rules to Live By." These are violations of standards frequently cited as causing/contributing to the cause of fatal accidents.
- Potentially flagrant violations.

Note: special assessment is not mandatory for the above categories of violations, as mitigating circumstances may be involved. In such cases, special assessment is not warranted.

The following matrix is intended to assist enforcement personnel in determining whether a violation is required to be special assessed or reviewed for special assessment.

**Violations Requiring Submission of an  
MSHA Special Assessment Review Form**

Category	Negligence Evaluation				
	None	Low	Moderate	High	Reckless Disregard
Fatality / Serious Injury	Yes	Yes	Yes	Yes	Yes
Section 104(a) citations issued for violations of Sections 103(a), 103(f), 103(j), 103(k), 104(d), 104(b), 104(e), 104(g)(1), 107(a), and 110(j) the Mine Act	Yes	Yes	Yes	Yes	Yes
Flagrant Violations*	N/A	N/A	N/A	Yes	Yes
110(b) Daily Penalty for Failure to Abate*	Yes	Yes	Yes	Yes	Yes
110(g) Smoking or Smoking Materials Violations Cited to Miners*	Yes	Yes	Yes	Yes	Yes
"Rules to Live By" violations	Yes	Yes	Yes	Yes	Yes
Any other violation involving circumstances warranting special assessment	Yes	Yes	Yes	Yes	Yes
<b>*Special assessment required</b>					

Completion of a Special Assessment Review (SAR) Form (MSHA Form 7000-32) **is mandatory** for each violation that is reviewed for special assessment. When the District Manager determines that a special assessment is warranted, an SAR package shall be prepared and submitted directly to the Office of Assessments, Accountability, Special Enforcement and Investigations. For violations contributing to a fatal or serious injury accident

(inspection codes E06/E07), an SAR package shall be prepared and submitted to the OAASEI **whether or not** special assessment is recommended. For potential violations under the flagrant violation provision of the MINER Act, whether recommended for special assessment or not, the District Manager must submit the SAR package including all supporting documentation to the Administrator for review and approval. The Administrator will transmit the SAR packages for violations recommended for flagrant violation assessment to the OAASEI.

All SAR packages shall include a copy of the relevant citation or order; the Special Assessment Review form; copies of inspector notes, sketches, or photographs; relevant portions of required plans; accident investigation reports, data sheets, and/or memoranda; and other information that would assist the Office of Assessments, Accountability, Special Enforcement and Investigations in determining an appropriate civil penalty. The SAR form must describe the facts and circumstances justifying the recommendation for special assessment. For flagrant violations, a memorandum from the appropriate Regional Solicitor is also required to be included in the SAR package.

When a violation is being reviewed for special assessment or flagrant determination, the district office must ensure that the violation is immediately placed on hold for special assessment review in MSHA's Standardized Information System (MSIS). This action prevents the violation from being automatically assessed until the special assessment/flagrant review process has been completed. Violations that are not placed on hold will automatically be marked assessment ready for regular assessment 30 days after issuance. District offices should not mark violations that are recommended for special assessment or violations contributing to a fatal or serious injury accident as assessment-ready in MSIS. The Office of Assessments, Accountability, Special Enforcement and Investigations will mark these violations assessment ready upon receipt of the SAR package. Excluding fatal or serious injury accident-related violations, District offices should release the hold status in MSIS for any violation reviewed and not recommended for special assessment.

Excluding flagrant and fatal or serious injury accident-related violations, violations with recommendations for special assessment shall be reviewed and forwarded to the Office of Assessments, Accountability, Special Enforcement and Investigations within 30 days of their issuance. An SAR package, as described earlier in this policy, will be included with the violation.

Flagrant violations are required to be specially assessed. The SAR form check box shall be marked to identify all flagrant violations. Flagrant violations shall be reviewed and forwarded to the Office of Assessments, Accountability, Special Enforcement and Investigations within 90 days of their issuance. An SAR package, as described earlier in this policy, will be included with the violation.

Violations contributing to a fatal or serious injury accident are required to be reviewed for special assessment and forwarded to the Office of Assessments, Accountability, Special Enforcement and Investigations whether recommended for special assessment or not. Accident-related violations shall be reviewed and forwarded to the OAASEI within 90 days of their issuance. An SAR package, described earlier in this policy, will be included with the violations. All violations associated with the accident shall be forwarded to the OAASEI at the same time.

All violations will automatically be marked assessment ready for regular assessment 182 days after issuance regardless of any hold status.

The Office of Assessments, Accountability, Special Enforcement and Investigations will review each recommendation for special assessment and make the final decision, conferring with the Coal or Metal and Nonmetal Mine Safety and Health program areas as necessary.

District personnel should regularly review the **Assessable Violations Not Marked Report (R-119 Report)** and "Potential Flagrant Violations Not Assessed" oversight report to ensure violations recommended for special assessment or otherwise included in SAR packages have been processed by the Office of Assessments, Accountability, Special Enforcement and Investigations.

#### 100.6 Safety and Health Conferences

The safety and health conference is a scheduled meeting of a mine operator or miners' representative with MSHA district personnel to discuss the facts surrounding a citation or order. The purpose of the conference is to provide an opportunity to submit additional information regarding the violation. At this meeting, questions regarding the issuance of a citation or order, including the inspector's evaluation of negligence, gravity, and good faith may be discussed. Types of issues that

might be discussed in a pre-penalty safety and health conference include

potential Pattern of Violation (POV) orders, S&S citations issued during a POV program assessment period, statutory violations, flagrant violations, and accident-related violations. A conference must be requested in writing by the operator or other party within 10 calendar days of notification by MSHA of the opportunity for a safety and health conference. Generally, an operator should be notified of the right to request a safety and health conference at the time the inspector issues a citation or order or at the inspector's closeout conference. This notification starts the 10-calendar-day period during which operator or other parties may request a safety and health conference or submit additional information. The request or additional information should be submitted to the District Manager or designee. A conference request must be in writing and must include a brief statement of the reason why each citation or order should be conferenced. Requests for safety and health conferences will be considered based on the postmark date of mailing.

The decision to grant an operator's request for a safety and health conference is within the District Manager's discretion. Upon receiving a written request, MSHA will evaluate the circumstances in deciding to grant or deny the request and notify all affected parties. If granted, MSHA will notify in writing all affected parties including the mine operator, miners' representative, contractor, issuing inspector, and the inspector's supervisor of the conference, i.e., subject, date, time, and location of the conference. MSHA maintains the right to limit the conference parties.

Once the conference has been granted, the Conference Litigation Representative (CLR) or designated MSHA representative (DMR), e.g. field office supervisor, shall ensure that citations/orders being conferenced are not processed by the Office of Assessments, Accountability, Special Enforcement and Investigations (OAASEI). Any violation for which a conference is scheduled prior to a civil penalty assessment should be placed on hold in MSIS to prevent it from receiving an automatic regular assessment before the conference is conducted.

The issuing inspector shall be notified of the time and location of the conference. If not present, the inspector will be informed of the results of the conference.

In the case of Section 110(c) violations where an opportunity for conference has not been previously offered, the Headquarters Office will notify the District Manager by memorandum that an operator or agent is to be given the opportunity for a safety and health conference. The memorandum will include a review and recommendation from the Office of the Solicitor, the name of the agent against whom a penalty is proposed to be assessed, the specific violation allegedly knowingly authorized, ordered or carried out, and the reference to the MSHA special investigation file. The District Manager, or designee, will promptly notify the operator or agent of the opportunity for a conference and the specific matters to be discussed. The notice may be either in person or by telephone. This notice from the District Manager is the first formal notice to the operator or agent of MSHA's decision to assess an individual civil penalty against the agent.

During the safety and health conference, the investigative file shall not be shown to the operator or agent, nor in any instance may the information contained in the file be released. The scope of the conference will not be whether a violation exists.

Instead, the conference will focus on the facts and circumstances relating to the statutory criteria, and any facts in mitigation will be considered. The District Manager must provide the conference results to Headquarters, and the agent's correct home address, so that the Office of Assessments, Accountability, Special Enforcement and Investigations can transmit the proposed penalty assessment to the agent.

#### 100.6(d) Referral of Citations/Orders for Assessment

Section 105(a) of the Mine Act requires that a proposed civil penalty be issued for all violations "...within a reasonable time after the termination of such inspection or investigation ...." For proposed assessment purposes, "reasonable time" is normally defined as within 18 months of the issuance of a citation or order or, in the case of a fatal accident, within 18 months of the issuance of the accident report. However, citations and orders may be assessed more than 18 months after they are issued if circumstances so warrant.

Upon closure of a pre-penalty safety and health conference, expiration of the conference request period, or the District Manager's decision not to schedule a pre-penalty conference, all citations and orders will be referred for civil penalty assessment, unless they are being held for special assessment or

flagrant review. The District Manager will ensure that all violations, including citations that have not been terminated and those that are held for special assessment or flagrant review, are referred for civil penalty assessment no later than 6 months from the date of issuance. MSIS will automatically mark citations, whether terminated or not, and orders assessment-ready 30 days after issuance unless they have been placed on hold for a pre-penalty conference or special assessment review. MSIS will also automatically mark all citations and orders assessment-ready 182 days after issuance, regardless of a hold for conference or special assessment review. Citations and orders automatically marked assessment-ready by MSIS will receive regular formula assessments.

Citations/orders pending the outcome of a Petition for Modification or Pre-penalty Notice of Contest will be assessed a civil penalty in the interim and therefore should be forwarded for civil penalty assessment as described above. Should a decision be made in favor of the operator, the civil penalty for that citation/order will be eliminated.

#### 100.7(a) Notice of Proposed Penalty

Notice of the issuance of a proposed assessment will be provided to the mine operator and miners' representative.

Amended proposed assessments will be issued where the proposed assessment is found to be incorrect. When a proposed assessment has been timely challenged by the operator for sufficient reason, collection of the civil penalty will be suspended, pending review and a decision as to whether an amended proposed assessment will be issued. If a proposed assessment is amended, the amended proposed assessment will appear on a subsequent billing statement, and the operator will have 30 days from receipt of that statement in which to pay or contest the penalty. If an amended proposed assessment is not issued, the 30-day period to pay or contest will begin on the date the operator receives notice that the proposed assessment will not be changed.

An amended proposed assessment that increases the amount of the penalty will generally be issued only if the mine operator is notified of MSHA's intent within 30 days of the operator's receipt of the initial proposed assessment. However, where an amended assessment is needed because a 104(b) order was issued after the assessment of a citation that was not terminated at the time, such notification is not required.

A contested citation or order that is subsequently modified will not receive an amended proposed assessment. If the citation or order has not been adjudicated, the appropriate Regional Solicitor or Conference Litigation Representative will be provided with a copy of the modification.

In the event a citation or order is vacated after a proposed assessment has been sent to the operator, the Office of Assessments, Accountability, Special Enforcement and Investigations will advise the operator, if appropriate, to disregard the proposed assessment.

100.8(a) Service

Proposed assessments returned to the Office of Assessments, Accountability, Special Enforcement and Investigations, by the mailing service will be researched once for a more current or more appropriate address. If such an address is found, the proposed assessment will be re-mailed once in an attempt to effect service. Returned proposed assessments marked refused or unclaimed are considered served. Returned proposed assessments to individuals (agents) will be hand-delivered by MSHA district personnel. A refusal to accept hand-delivered proposed assessments is considered service.

**PART 104 PATTERN OF VIOLATIONS**

On October 1, 1990, regulations to identify mine operators who meet the criteria for a Pattern of Violations as outlined in 30 CFR Part 104 became effective. These regulations include procedures for initial screening of mines that may be developing a Pattern of Violations; criteria for determining whether a Pattern of Violations exists at a mine; procedures for issuance of potential pattern notice and final pattern notice; and procedures for termination of a Notice of Pattern of Violations.

**104.2 Initial Screening**

At least once every year, District personnel are to complete an initial screening of each mine in their respective districts to determine whether there is sufficient cause to apply the pattern criteria for possible issuance of a potential Pattern of Violations notice. At the discretion of the District Manager, screenings may be conducted more frequently.

The final rule does not specify the period of a mine's compliance history to be examined during the initial screening. Generally, a mine's 2-year compliance history will provide sufficient information for an evaluation of the health and safety conditions. In some cases, however, other factors such as interruption of mining activities or changes in mine ownership may suggest that a longer or shorter compliance history be reviewed.

Persons conducting the initial screening should use sources such as computer printouts identifying the mine's compliance history relative to the types of enforcement action noted in 30 CFR 104.2(a); information in mine files such as prior inspection reports and inspector's notes; special assessment and enhanced assessment action; special investigation activities; and other relevant information resulting from inspector debriefings. Only violations and orders issued after October 1, 1990, can be considered in the initial screening process.

The legislative history of Section 104(e) of the Federal Mine Safety and Health Act of 1977 does not support a distinction between large and small operations in establishing a pattern. Also, 30 CFR Part 104 avoids triggering the pattern notice based on a predetermined number of violations of particular standards. Therefore, a quantity of violations that might constitute a pattern at one mine may be insufficient to trigger a pattern notice at another mine. Accordingly, the initial screening criteria in 30 CFR 104.2 are to be applied on a mine-by-mine basis. This screening procedure shall also apply to each independent contractor's compliance history at a specific mine site. Each independent contractor at a mine site shall be screened as a separate entity. An independent contractor's compliance history shall not be collectively screened based on district or national data.

Mitigating circumstances, as referenced in 30 CFR 104.2(b)(4), means causes or circumstances resulting in repeated violations that are beyond the control of the operator, even though the operator has made a diligent effort to comply with the regulations. For example, a severe geological condition may present complex mining problems and should be given full consideration where operators have undertaken methods to control the condition but nevertheless failed to maintain compliance.

A record of the initial screening process for each mine is to be kept in the District until the next screening is conducted.

#### 104.3 Pattern Criteria

The pattern criteria shall be applied to mines identified in the initial screening process as having a compliance problem to determine if these mines demonstrate a potential Pattern of Violations. The objective will be to identify those operators who habitually allow the recurrence of violations. This review shall focus on the mine's history of repeated significant and substantial (S&S) violations of a particular standard, of standards related to the same hazard, or caused by an unwarrantable failure to comply. A pattern evident in any one of these categories may provide a sufficient basis for the issuance of a potential Pattern of Violations notice. It should be noted that violations used for pattern criteria are only those S&S citations/orders issued after October 1, 1990, that have become final either through the assessment process or through litigation.

104.4 Issuance of Notice

30 CFR 104.4 addresses two different notification processes. Section 104.4(a) relates to a District Manager's notification of a potential Pattern of Violations. Section 104.4(c) relates to the Administrator's decision on whether to issue a notice of a Pattern of Violations.

The reasons for placing a mine in a potential Pattern of Violations category must be clearly stated in a notice to the mine operator in accordance with 30 CFR 104.4(a). Factors considered in the initial screening process and Pattern of Violations criteria application should be specified in the notice. For example, merely stating that a history of repeated S&S violations of a particular standard exists may not adequately explain to the operator why the mine may be placed on a pattern. The specific standard and the number of times it has been cited should be clearly defined in the notice along with all other supporting information. Furthermore, the District Manager should advise the operator in this notice that if the operator implements a program as specified in 30 CFR 104.4(a)(4), the operator must provide a written program to the District Manager within 20 calendar days or less from receipt of the notice. The notice of potential Pattern of Violations is to be sent to the mine operator by certified mail or hand delivered. The mine operator is required to post this notice on the mine bulletin board. Additionally, a copy of the notice must be sent to the representative of miners and the Pattern of Violations coordinator in headquarters.

If a program is implemented in accordance with 30 CFR 104.4(a)(4), the District Manager may allow additional time to evaluate the effectiveness of the program. This timeframe cannot exceed 90 days, and the District Manager can terminate the evaluation period at any time if the program's purpose is not being achieved.

When notice of a potential Pattern of Violations has been sent to a mine operator, any subsequent action taken by the District Manager to rescind this notice is to be stated in a letter sent to the mine operator, representative of miners, and Pattern of Violations coordinator.

If an operator resumes the practice that gave rise to the original notification of potential Pattern of Violations, a new notice can be issued to the operator based on the circumstances

that resulted in the original notice, as well as the operator's most recent conduct. Under such circumstances, the District Manager would also take into consideration the operator's performance following the previous notification in determining whether to allow the operator another 90-day period to implement a program to reduce S&S violations.

When the District Manager receives a decision from the Administrator to issue a Notice of Pattern of Violations, the District Manager is to send by certified mail, or hand deliver, the Notice of Pattern of Violations to the mine operator. This notice must be posted on the mine bulletin board. A copy of this notice also is to be provided to the representative of miners and the Pattern of Violations coordinator. Following notification to the operator, the District Manager should initiate appropriate inspection activities to ensure that the mine is inspected in its entirety during the following 90-day timeframe.

104.5 Termination of Notice

When a Notice of Pattern of Violations is terminated in accordance with 30 CFR 104.5, an authorized representative is to issue a notice of termination to the mine operator and is to provide a copy to the representative of miners and the Pattern of Violations coordinator.

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