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A Guide for Miners' Representatives

The Mine Safety and Health Administration has developed this guide for any person, group, or organization designated by two or more miners to represent their interests during health and safety enforcement processes at their mine.

Recognizing the important role of miners' representatives in health and safety, Congress included language in the Federal Mine Health and Safety Act of 1977, specifically stating that a designated miners' representative be included in important aspects of mine safety and health. We designed this guide to provide miners' representatives with a convenient, up-to-date single source of information that explains the various roles, rights and responsibilities afforded by the Mine Act.

This guide provides detailed information on a variety of subjects, including how to become a miners' representative; traveling with and assisting mine inspectors; reporting hazardous conditions and imminent dangers; and participating in accident investigations; elements of discrimination under the Mine Act; health and safety training; petitions for modification of safety standards; civil penalties and litigation procedures; and obtaining information and records.

We hope miners' representatives find this guide useful. Participating in the health and safety process can help ensure miners have a healthy and safe work environment.

A handwritten signature in black ink, appearing to read "Joseph A. Main". The signature is fluid and cursive, with a long horizontal stroke at the end.

Joseph A. Main
Assistant Secretary
Mine Safety and Health Administration

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INTRODUCTION

Section 2 of the Mine Act (Act) says that mine operators "...with the assistance of the miners have the primary responsibility to prevent the existence..." of health and safety hazards at mines.

All miners, of course, cannot assist the Mine Safety and Health Administration (MSHA) in every one of their inspections or investigations. However, the Act does provide miners the right to designate a representative or representatives to act on their behalf in certain aspects of enforcement activities.

This guide is a supplement to the Guide to Miners' Rights and Responsibilities and designed to further assist everyone in understanding the roles, rights, and responsibilities of miners' representatives.

This guide must not, however, be considered an "official" statement or portrayal of the law and should not be used as a source for legal interpretations of the Act. Some of the rights and responsibilities described in this guide may involve interpretations of the Act by MSHA and could be modified by subsequent court decisions.

All web addresses referenced in this guide were accessible as of the publication date.

It is MSHA's hope that this guide will be useful to everyone involved in mining in realizing the vital role of a miners' representative.

If you, as a miners' representative or a person interested in becoming one, have questions about your rights and responsibilities under the Act beyond the information provided in this guide, please contact your nearest MSHA office.

A good safety and health program depends on the active participation and interest of everyone at the mine site. If you and your fellow miners know and exercise your rights and responsibilities, workplace deaths, injuries, and illnesses can be prevented.

CHAPTER 1 – UNDERSTANDING THE ORGANIZATION OF MSHA

To understand MSHA, it is necessary to know its overall mission, the major offices in the Agency and what they do, the people you may encounter, and the roles they play.

The Mission of the Mine Safety and Health Administration

The mission of the Mine Safety and Health Administration is to:

- Administer the provisions of the Federal Mine Safety and Health Act of 1977 (Mine Act).
- Enforce compliance with mandatory safety and health standards as a means to eliminate fatal accidents.
- Reduce the frequency and severity of nonfatal accidents.
- Minimize health hazards.
- Promote improved safety and health conditions in the Nation's mines.

MSHA carries out the mandates of the Mine Act at all mining and mineral processing operations in the United States, regardless of size, number of employees, commodity mined, or method of extraction.

People You May Encounter

Mine Inspectors

Every Mine Inspector must have credentials issued by MSHA indicating that they are an Authorized Representative (AR) of the Secretary of Labor. This credential authorizes the right of entry to any coal or other mine. MSHA inspectors should be able to show their credentials to you or the operator of your mine, upon request.

The Mine Inspector is a trained professional who is authorized to:

- Conduct on-site inspections or investigations of underground and surface mines in order to identify potential hazardous conditions that may affect the safety and health of workers.
- Check mining performance to ensure compliance with safety and health laws and regulations.
- Issue citations or orders when violations and/or hazards are identified.
- Determine how accidents and disasters are caused and prevented.

- Discuss inspection and investigation findings.
- Provide technical support and assistance to mine management and personnel.
- Ensure proper maintenance and use of mining equipment.

You can find information regarding the authority, training, and qualifications of an MSHA inspector under Sections 103(a) and 505 of the Act.

Field Office Supervisors

Field Office Supervisors have a critical role as part of MSHA's enforcement management team. Each supervisor has to have a good working knowledge of all current MSHA regulations, policies and procedures. They are responsible for coordinating all aspects of an inspector's daily duties. They are usually located in MSHA district or field offices near your mine or in remote locations.

Field Office Supervisors are responsible for:

- Ensuring that inspections are carried out professionally and conducted in an efficient and cost-effective manner.
- Providing guidance, direction, and approval in a number of areas related to health and safety of workers at your mine.

A Field Office Supervisor, in addition to being an Authorized Representative, is required to travel to mines to observe inspectors from time to time.

If you have questions about enforcement activities and you are unable to resolve them with an inspector, the first place you should seek help is the Field Office Supervisor.

Technical Specialists

MSHA's Technical Specialists perform various duties in their areas of expertise.

Sometimes mine operators and miners need special technical assistance to help control the hazards at their workplaces. Technical Specialists provide this assistance.

Besides working directly with individual mining operations, MSHA's technical specialists conduct investigations at mine sites, perform laboratory studies, and perform safety-related tests of mining equipment. They also provide special on-site technical assistance during mine emergencies.

MSHA provides mining companies with help in recognizing and overcoming onsite health hazards such as harmful dusts, liquids, vapors, and gases.

MSHA also helps mining companies to recognize and effectively deal with physical agents such as noise, ionizing radiation, and heat stress.

Specialists also work to enhance safety in the mine by giving help with ventilation and electrical systems, roof support and ground control methods, mine waste facilities, equipment use, and many other aspects of the mining environment.

Conference and Litigation Representatives (CLR)

Each district office has a Conference and Litigation Representative (CLR). They are specifically trained to evaluate the arguments made by various parties including miners' representatives regarding enforcement actions taken by MSHA.

Participating in the conference litigation process affords you the opportunity to present additional information and facts regarding citations/orders with which you disagree in an informal manner prior to penalty assessment. As a result, you will receive an unbiased review of those documents.

Special Investigators (SI)

MSHA Special Investigators are specially trained professionals responsible for the investigations of complaints of discrimination filed by miners, miners' representatives, or applicants for employment, under Section 105(c) of the Act. Special investigators are assigned to all coal and metal and nonmetal districts.

These investigators are Authorized Representatives of the Secretary of Labor for the purpose of investigations and required to carry credentials to verify their authority. If you or the miners at your mine file a discrimination complaint under Section 105(c), you will be contacted by an MSHA special investigator.

MSHA special investigators are also responsible for the investigation of possible knowing and willful violations of mandatory health and safety standards or the Act by mine operators and their agents.

This is the part of MSHA enforcement that investigates potential criminal matters for the Agency. All of MSHA's special investigations are confidential.

Accident Investigators (AI)

Accident Investigators are Authorized Representatives of the Secretary of Labor who are responsible for the investigation of fatal and nonfatal mine accidents and incidents.

Through the use of interviewing, sketching, evidence collection and evaluation, accident reconstruction, timelines, interaction with family members, and developing conclusions and corrective actions, they work to determine the root cause(s) of the accident or incident and to share this information with the mining community and others to help prevent similar occurrences.

District Managers (DM)

Every coal and metal and nonmetal MSHA district has a Manager who is responsible for the overall operation of the health and safety programs in their respective areas. They are responsible for the consistent application and enforcement of regulations and national policies and procedures.

The DM makes sure that the health and safety programs in their district are efficient and reflect an appropriate and cost-effective use of resources. They are also responsible for the approval of a variety of plans related to mining.

Assistant District Managers (ADM)

Assistant District Managers direct and oversee inspection activities. There are usually two ADMs in each district; one ADM responsible for enforcement activities and one ADM responsible for technical inspections and functions to ensure that all mandatory safety and health inspections and accident investigations are carried out according to the Act.

MSHA inspectors, Technical Specialists, and Field Office Supervisors report to the ADMs in their district.

Educational Field Services (EFS)

Training specialists assigned to Educational Field Services work to ensure miners receive effective training. They are responsible for evaluating mine training programs and instructors under 30 CFR Parts 46 and 48. While EFS personnel provide injury and illness prevention assistance, they are not inspectors and are not authorized to issue citations and orders at your mine.

Small Mine Consultation Program (SMCP)

Personnel assigned to the SMCP focus on mines with five or fewer employees. These operations typically do not have the resources to employ full-time safety and health professionals. Working one-on-one with small mine operators and miners, SMCP specialists explain the importance of developing effective health and safety practices, including miners' rights. Like the Training Specialists in EFS, these specialists are not authorized to issue citations and orders at your mine.

Other Entities Who Are a Part of or Associated With MSHA

Approval and Certification Center (ACC)

The Approval and Certification Center approves and certifies certain mining products for use in underground coal and gassy underground metal mines. Technical experts evaluate and test equipment, instruments, and materials for compliance with Federal regulations. An approval issued by the Center is internationally recognized.

The Center performs other technical functions in support of:

- MSHA's programs including investigation of health and safety concerns relating to product approval.
- Litigation assistance on issues involving approved products.
- Accident investigation assistance when an explosion, fire, injury or fatality involves (or may involve) approved equipment.
- Identification of the need for technical solutions to problems in application of mining equipment, materials, and explosives.
- Technical assistance in developing new or revised Federal standards and regulations.
- Assistance to other government agencies or research programs that relate directly to MSHA.
- Engineering support and technical assistance in the area of industrial safety.

The National Mine Health and Safety Academy

The mission of the National Mine Health and Safety Academy is to reduce accidents and improve health conditions in the mining industry through education and training. To fulfill this mission, the Academy conducts a variety of educational and training programs in health and safety and related subjects for Federal mine inspectors and other government, mining, and industry personnel.

The Academy designs, develops, and conducts instructional programs to assist in government, industry, and labor efforts to reduce accidents and health hazards in the mineral industries.

National Institute for Occupational Safety and Health (NIOSH)

NIOSH collects information, performs research, and provides products and services to help prevent work-related illnesses, injuries, diseases, and fatalities.

NIOSH conducts Health Hazard Evaluations (HHE) at worksites as part of their work.

In mining, health hazard evaluation means the investigation and determination of the potentially toxic or hazardous effects of substances or physical agents normally used or found "...in any place of employment to which the [Mine Act] is applicable." For more information visit www.NIOSH.gov

Office of the Solicitor (SOL)

The Office of the Solicitor's mission is to meet the legal service demands of the entire Department of Labor. SOL fulfills this mission by representing the Secretary and the client agencies in all necessary litigation, including both enforcement actions and defensive litigation, and in alternative dispute resolution activities; by assisting in the development of regulations, standards and legislative proposals; and by providing legal opinions and advice concerning all the Department's activities.

Department of Labor lawyers are not employees of MSHA. They represent MSHA in various capacities.

There is an Office of the Solicitor Division of Mine Safety and Health that is responsible for representing MSHA in litigation, appellate, and rulemaking matters arising out of the Mine Act.

The regional offices provide trial litigation and general legal services to the Department, and aid regional officials in carrying out their responsibilities. The regional offices recommend and prosecute litigation at the administrative and District trial levels, prepare legal interpretations and opinions, and assist the United States Attorney in the prosecution of criminal cases.

If you participate in an accident investigation or attend a hearing concerning a contested penalty, you may encounter a lawyer from SOL.

The Federal Mine Safety and Health Review Commission (Commission)

The Commission is an independent adjudicative agency that provides administrative trial and appellate review of legal disputes arising under the Mine Act.

The Commission is concerned solely with the adjudication of disputes under the Mine Act, including the determination of appropriate penalties. It does not regulate mining or enforce the Mine Act. The Commission was established as an independent agency to ensure its impartiality.

Most cases deal with civil penalties assessed against mine operators and address whether the alleged safety and health violations occurred as well as the appropriateness of proposed penalties. Other types of cases include orders to close a mine, miners' charges of safety-related discrimination, and miners' requests for compensation after the mine is idled by a closure order.

The Commission's Administrative Law Judges (ALJs) decide cases at the trial level. The 5-member Commission provides appellate review. Commissioners are appointed by the President and confirmed by the Senate. Review of an ALJ decision by the Commission is not guaranteed but requires the affirmative vote of two Commissioners. Most of the cases accepted for review are generated from petitions filed by parties adversely affected by an ALJ decision. However, cases can also be accepted based on the Commission's own direction for review. An ALJ decision that is not accepted for review becomes a final, non-precedential order of the Commission. Appeals from the Commission's decisions are sent to the U.S. Courts of Appeals.

Procedures for appealing cases to the Commission are contained in its Rules of Procedure (29 CFR Part 2700). The Commission also publishes these rules in a separate pamphlet.

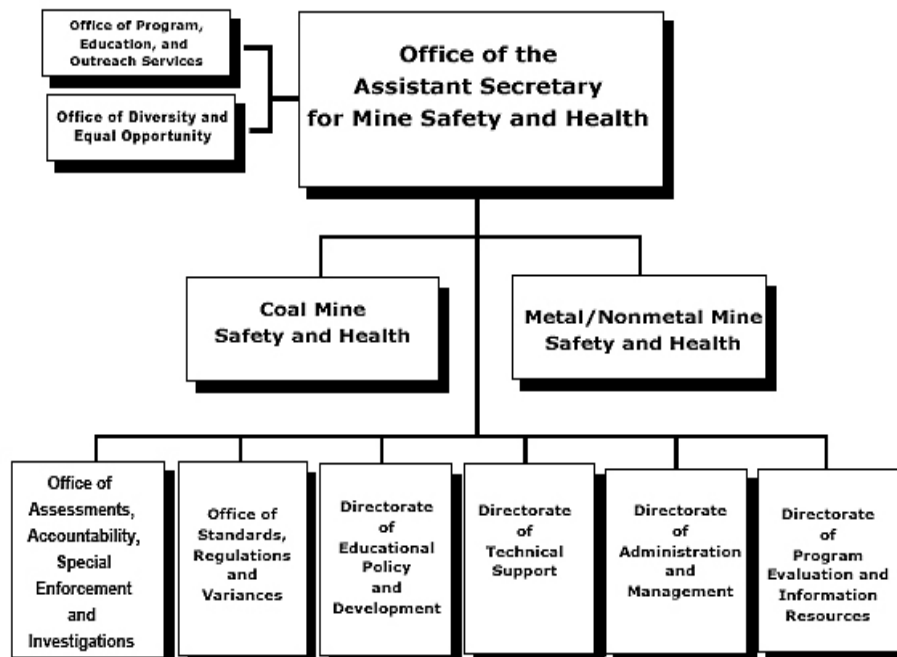
A brochure, entitled "How a Case Proceeds Before the Commission" is also available. To order documents or inquire about the filing of an appeal or a pending case, please contact the Commission's Docket Office at (202) 434-9950.

If a case has been assigned to an ALJ, inquiries should be directed to that ALJ. The use of the case docket number will greatly facilitate the processing of any request.

If you file a petition under Sections 101(c), 111, or a complaint under Section 105(c) of the Mine Act with MSHA, you may appear before the Commission. For more information visit www.fmsihrc.gov

Office of the Assistant Secretary (OAS)

The Office of the Assistant Secretary plans, directs, and administers MSHA's activities to eliminate fatal mining accidents, reduce the frequency and severity of accidents, and to minimize health hazards through enforcement of mandatory safety and health standards in the mining industry.



Program areas reporting to the OAS include:

- Coal Mine Safety and Health
- Metal and Nonmetal Mine Safety and Health
- Directorate of Program Evaluation and Information Resources
- Directorate of Administration and Management
- Directorate of Technical Support
- Directorate of Educational Policy and Development
- Office of Standards, Regulations, and Variances
- Office of Assessments, Accountability, Special Enforcement and Investigations

Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health are both headed by Administrators who operate largely independent of each other and have responsibility for separate networks of enforcement offices.

Coal Mine Safety and Health

Coal Mine Safety and Health is headquartered in Arlington, Virginia, and includes the Office of the Administrator, Health Division, and Safety Division.

The organization also consists of 12 district offices and approximately 45 field offices located throughout the coal mining regions. Each district is headed by a District Manager who reports to the Administrator for Coal Mine Safety and Health.

Coal Mine Safety and Health is responsible for enforcing the Mine Act at all coal mines in the United States. This includes:

- Investigating fatal and serious nonfatal accidents.
- Issuing citations and orders for any observed violations.
- Conducting safety and health conferences with mine operators on citations and orders that are issued.
- Approving roof control, ventilation, and training plans required to be submitted by mine operators.
- Conducting inspections (four complete annual inspections of underground mines and two complete annual inspections of surface mines).
- Directing various mine safety and health assistance programs and training and certifying instructors.

- Investigating complaints of discrimination reported by miners, complaints of hazardous conditions reported by miners, and potential civil and criminal violations by mine operators and their agents.

Metal and Nonmetal Mine Safety and Health

Metal and Nonmetal Mine Safety and Health consists of a small headquarters office in Arlington, Virginia, and six district offices and 47 field offices and field duty stations located throughout the United States and Puerto Rico.

Metal and nonmetal mining is separated into four broad categories: metal, nonmetal, stone, and sand and gravel.

Metal and Nonmetal Mine Safety and Health enforces the Mine Act at all metal and nonmetal mining operations in the United States. This includes conducting inspections and investigations at the mine sites to ensure their compliance with health and safety standards required by the Mine Act. When inspectors and investigators observe violations of health or safety standards, they issue citations and orders to mine operators which require the mine operators to correct the problems.

Other important activities include:

- Investigating mine accidents.
- Reviewing mine operators' mining plans and education and training programs for miners.
- Investigating complaints of discrimination reported by miners, complaints of hazardous conditions reported by miners, and potential criminal violations.

Program Evaluation and Information Resources

The Program Evaluation and Information Resources (PEIR) office is responsible for:

- Conducting, reviewing, and evaluating the effectiveness of agency programs, and conducting follow-up reviews to ensure that appropriate corrective actions are taken where necessary.
- Collecting, analyzing, and publishing data obtained from mine operators about the frequency of work-related injuries and illnesses in the mining industry.
- Compiling national mine injury and illness data, and analyzing and sharing this information with the mining community and the public.
- Providing support and training programs for users of MSHA automated information systems, data communications networks, and ADP equipment.

Administration and Management

The Office of Administration and Management (A&M) plans and directs all MSHA administrative and management services such as:

- Serving as MSHA's authority on financial and human resource requirements.
- Overseeing the Agency's budget process.
- Directing human resource development programs.
- Managing property management, acquisition, contracts, and grant-related transactions.

Technical Support

Technical Support provides engineering and scientific expertise to assist MSHA, the states, and the mining industry in the resolution of safety and health issues.

This office assists these entities by:

- Conducting field investigations, laboratory studies, and analyses to resolve specific problems.
- Evaluating and approving equipment and materials used in mines.
- Maintaining mine emergency response readiness capabilities such as on-site analysis and decision-making assistance for crisis management.

Educational Policy and Development

The Educational Policy and Development office is responsible for:

- Planning, developing, monitoring, and evaluating all MSHA education and training programs addressing mine safety and health.
- Providing entry-level, journeyman, and specialized training for MSHA's enforcement staff.
- Providing guidance on developing health and safety training programs and training activities to ensure consistency with existing Agency policy.
- Reviewing training plans and programs and monitoring instructors to ensure this training is in compliance and is providing effective health and safety protection for miners.
- Working with small mine operators to provide assistance in developing health, safety and training programs.

- Formulating and interpreting MSHA training policy under 30 CFR Parts 46 and 48.
- Administering Grant programs which, in general, distribute funds to various entities in support of miner health and safety and mine emergency preparedness.

Office of Standards, Regulations, and Variances

The Office of Standards, Regulations, and Variances (OSRV) is responsible for guiding all of MSHA's rulemaking by:

- Reviewing regulations and health and safety standards.
- Proposing new regulations and standards and publishing them in the Federal Register for public comment.
- Reviewing Petitions for Modification filed by operators, miners and miners' representatives.
- Coordinating hearings for regulations, standards, and Petitions for Modification.

Office of Assessments, Accountability, Special Enforcement and Investigations

The Office of Assessments, Accountability, Special Enforcement and Investigations (OAASEI) is responsible for:

- Assessing and collecting civil monetary penalties for violations of the Mine Act and of mine safety and health standards.
- Administering and providing oversight of investigations of discrimination complaints filed under Section 105(c) of the Mine Act by miners, miners' representatives, or applicants for employment.
- Administering and providing oversight of investigations of knowing or willful violations under Section 110 against mine operators and their agents and violations of Title I of the Mine Act through the use of injunctive authority.
- Managing MSHA's enhanced enforcement strategies such as the Pattern of Violations Program, use of injunctive authority (Section 108), and impact inspections.
- Administering MSHA's accountability program to ensure that enforcement policies and procedures are applied and followed correctly.

CHAPTER 2 – THINGS YOU NEED TO KNOW ABOUT BECOMING A MINERS' REPRESENTATIVE

Your Role and Responsibilities as a Miners' Representative

As a miners' representative, you play an important role in helping to ensure healthy and safe working conditions and practices at your mine. Your knowledge of the worksite can provide MSHA's inspectors with a great deal of useful information.

Also, by observing what happens during an inspection, you can better understand how MSHA enforces health and safety regulations. The roles of the miner's representative also come with responsibilities.

These responsibilities may include:

- Assisting mine operators to comply with mandatory health and safety standards and provisions of the Mine Act.
- Reporting accidents, health and safety hazards, and unsafe conditions.
- Complying with all Federal and State laws and regulations and company safety and health policies.
- Providing truthful statements and representations (orally or in writing) during any inspection or investigation, or on any applications, records, reports, plans, training certificates or other documents required to be kept or filed by the Act.
- Refraining from giving advance notice of an inspection conducted by MSHA.

What Is a Miners' Representative?

A miners' representative is any person, group or organization designated by two or more miners to represent their interests during health and safety enforcement processes at their mine.

Why Should You Become a Miners' Representative?

While the operator is ultimately responsible for assuring the safety and health of every employee, a good safety and health program depends on the active participation and interest of everyone at the mine site.

As a miners' representative you play a vital role as the eyes and ears of your fellow miners. Every miner cannot be on every inspection, at every hearing, or read every important document. This is why Congress gave miners the right to choose a representative to participate in mine safety inspections, attend Mine Act-related hearings, and be served with all of the important documents relating to your mine.

Is a Miners' Representative Elected?

The answer is no. A miners' representative is designated, not elected. You only need two miners from the mine to designate you as their representative.

MSHA does not automatically recognize a union representative as a miners' representative. Every miners' representative, including union representatives, must meet MSHA's requirements by filing the proper paperwork with the District Manager.

A mine can have multiple miners' representatives.

Groups of two or more miners may designate multiple miners' representatives. This is helpful when a mine has multiple shifts or multiple portals. Miners should designate a representative for each shift or have a representative available at each mining location to ensure that they are represented during every inspection.

NOTE: A person or persons on strike from the mine, or who is not employed due to injury and is unable to work is not considered to be a miner and cannot participate in the designation process.

Do You Have to Be Employed at the Mine to Be Designated as a Miners' Representative?

The answer is no. A person, group or organization designated as a miners' representative does not have to be employed at the mine or work in the mining industry.

Do You Need Special Training to Be a Miners' Representative?

If you travel frequently, or more than five consecutive days with an inspection party, you are required to have completed initial miner training under 30 CFR 46 or 30 CFR 48.

Your right to travel with inspectors on mine property is limited if you do not have the required training. You may participate as a representative in other ways.

Here's What You Have to Do to Become a Miners' Representative

Under 30 CFR 40 you must complete the required paperwork (30 CFR 40.3) and file it with the District Manager responsible for your mine before MSHA recognizes you as a designated miners' representative.

See 30 CFR 40 for paperwork requirements to be recognized by MSHA as a miners' representative.

You can also find the information necessary for filing at <http://www.msha.gov/forms/elawsforms/MineRep.htm>

Your document(s) must include:

- Your current name.
- Your current address and a telephone number where you can be contacted.
- The name and address of the operator of the mine where you are being designated as a miners' representative.

If you are representing an organization such as a union or other group(s), your document(s) must also include:

- The name, address, and telephone number of the organization.
- Your title within the organization.

Your document(s) must also include MSHA's mine identification number (Mine ID) for the mine at which you are a miners' representative.

MSHA has a convenient advance filing option that preserves miner confidentiality. There is no requirement that the identities of the designating miners be generally known or published. If you desire confidentiality, you should file the required information in a manner that preserves this confidentiality. There are three different methods by which you may file in advance of exercising your rights as a miners' representative:

- Contact the appropriate District Manager and
- Provide the completed MSHA form 2000-238 (checking "confidential" if applicable) or;
- Provide the required information orally (requesting a confidential designation if applicable).
- Call the MSHA hotline telephone number (one call does it all), 1-800-746-1553 and provide the information as prompted. The hotline uses the MSHA Form 2000-238.
- File online at www.msha.gov, under Online Tools, select Online Filing/Forms Homepage on the left side of the page, then select Reports/Notices/Complaints, and select Notification of Representative of Miners.

For all filings requesting a confidential designation, MSHA protocol limits access to the appropriate District Manager and that District Manager's designees.

- Include the names of the miners on the copy of the document you provide to the District Manager (DM).

NOTE: You may omit any information that identifies the miners on the copy sent to the operator, with the District Manager's approval. Should you remove information about the miners, be prepared to explain to the District Manager why you feel that this should be held in confidence. MSHA will not tell the operator the identity of those miners if there is a risk of harm to them.


You must include proof of designation as a miners' representative by two miners at the mine.

- This document should also state whether the person, group, or organization is designated for all purposes or whether it is limited. For example, representation may be limited to a shift or to an event such as an accident investigation. If you are limiting the representation, make sure to state clearly what the nature of the limitation is.
- Include in this designation the name(s), address(es), and telephone number(s) of anyone who may serve in your absence.
- This designation is to be signed by the miners who chose you as their representative.
- You must state on your paperwork that you gave all of the filed paperwork to the mine operator either before or at the same time that you filed the paperwork for approval by the District Manager.
- The final statement on the paperwork must certify that all the information is true and correct to your knowledge.
- You must, as the newly designated miners' representative, sign this statement.

It is your responsibility to ensure that both the appropriate District Manager and the mine operator receive all of the information required and to inform them of any changes to this information.

Once you are recognized as a miners' representative for the mine, the operator must post a copy of the information on the mine bulletin board. This posting is to be kept up-to-date.

You can file online to become a miners' representative.


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Mine Safety and Health Administration Administration
- MSHA - Protecting Miners' Safety and Health Since 1978

**MSHA** Forms and Online Filings

Form number: None

Form name: MSHA Notification of Representative of Miners

Description: A written declaration of any person or organization which represents two or more miners at a coal or other mine for the purposes of the Act.

OMB Control Number and Expiration Date: 1219-0042; 6/30/2014

Filing Options: [File online](#)
[Change online filing registration information](#)

This notification may also be filed by submitting a printed letter to your local MSHA District Office .

- [District office contact information for coal mines](#)
- [District office contact information for metal/nonmetal mines](#)

Contact Information: Questions regarding this form should be directed to MSHA at (877) 778-6055 or MSHAhelpdesk@dol.gov

Privacy Notice: [Privacy Notice](#)

Step 1 – Enter the Mine ID.

A Mine ID is a unique seven digit identification number assigned by MSHA to a surface or underground mining operation.

The screenshot shows the MSHA website interface. At the top is a red header with the United States Department of Labor logo and name on the left, and links for 'Subscribe to E-mail Updates', 'Advanced Search' (with a search bar), and a list of site navigation links (A-Z Index, Site Map, FAQs, MSHA Forms, About MSHA, Contact Us, En Español) on the right. Below the header is a white banner for the 'Mine Safety and Health Administration' with the tagline 'MSHA - Protecting Miners' Safety and Health Since 1978' and a 'Print This Page' button. The main content area is a yellow-bordered box titled 'Notification of Representative of Miners'. Inside, it shows a breadcrumb trail: 'Step 1: Mine Information > Step 2: Representative Information > Step 3: Add Alternative Representatives > Step 4: Summary'. The current step is 'Step 1: Mine Information', with the instruction 'I wish to designate a representative of miners for the following mine:'. There is a text input field for 'MSHA Mine ID' containing '1001900' and a 'Retrieve Mine Information' button. Below this is a checkbox with a checkmark and the text: 'certify that as the individual completing this form I have been designated as the representative of miners for this mine. I understand that I must have a valid email address to complete and to electronically "sign" this form'. A 'Next >>' button is at the bottom right of the form area. At the very bottom of the page is a red footer with links for 'FAQs', 'Freedom of Information Act', 'Privacy & Security Statement', 'Disclaimers', 'Customer Survey', 'Online Filing Help Desk', and 'Contact Us'. Below this is a grey footer with contact information for the Mine Safety and Health Administration (MSHA), including the address, phone number, fax number, and website.

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Notification of Representative of Miners

Step 1: Mine Information > Step 2: Representative Information > Step 3: Add Alternative Representatives > Step 4: Summary

Step 1: Mine Information

I wish to designate a representative of miners for the following mine:

MSHA Mine ID: 1001900 Retrieve Mine Information

☒ certify that as the individual completing this form I have been designated as the representative of miners for this mine. I understand that I must have a valid email address to complete and to electronically "sign" this form


Next >>

(* Required Fields) [Cancel and return to menu](#)

FAQs | Freedom of Information Act | Privacy & Security Statement | Disclaimers | Customer Survey | Online Filing Help Desk | Contact Us

Mine Safety and Health Administration (MSHA) | 1100 Wilson Boulevard, 21st Floor Arlington, VA 22209-3939
www.msha.gov | Telephone: (202) 693-9400 | Fax: on-demand: (202) 693-9401

Validate that the Mine ID is correct by clicking on the Retrieve Mine Information Button.

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Notification of Representative of Miners

Step 1: Mine Information > Step 2: Representative Information > Step 3: Add Alternative Representatives > Step 4: Summary

Step 1: Mine Information

I wish to designate a representative of miners for the following mine:

MSHA Mine ID:

Name of Mine Company

DeAtley Crushing Co

Name of Mine

Plant 4

City

Lewiston

County

Nez Perce

☒ I certify that as the individual completing this form I have been designated as the representative of miners for this mine. I understand that I must have a valid email address to complete and to electronically "sign" this form

(* Required Fields)

[Cancel and return to menu](#)[FAQs](#) | [Freedom of Information Act](#) | [Privacy & Security Statement](#) | [Disclaimers](#) | [Customer Survey](#) | [Online Filing Help Desk](#) | [Contact Us](#)Mine Safety and Health Administration (MSHA) | 1100 Wilson Boulevard, 21st Floor Arlington, VA 22209-3939
www.msha.gov | Telephone: (202) 693-9400 | Fax-on-demand: (202) 693-9401

Step 2 – Mine Representative Information – Fill out the following if the representative is an organization.

Notification of Representative of Miners

Step 1: Mine Information > **Step 2: Representative Information** > Step 3: Add Alternative Representatives > Step 4: Summary

Step 2: Representative Information

New Representative of Miners:

*Date new representative of miners is to become effective

*The representative of miners is an: ☒ Organization ☐ Individual

Contact Information

*Organization Name

* Street/P.O. Box

* City

* Country

* State

* Zip Code

*Organization Phone

The individual within the organization to serve as the representative is (same as person completing the form):

* First Name

* Last Name

* Title

* Phone

Ext.

*Email Address

(To continue to the next step, the email address provided above must be valid and accessible. For verification purposes a security key will be sent to this email address and the form cannot be completed until the security key is retrieved.)

Fill out the following if the representative is an individual.

Notification of Representative of Miners

Step 1: Mine Information > **Step 2: Representative Information** > Step 3: Add Alternative Representatives > Step 4: Summary

Step 2: Representative Information

New Representative of Miners:

*Date new representative of miners is to become effective

*The representative of miners is an: ☐ Organization ☒ Individual

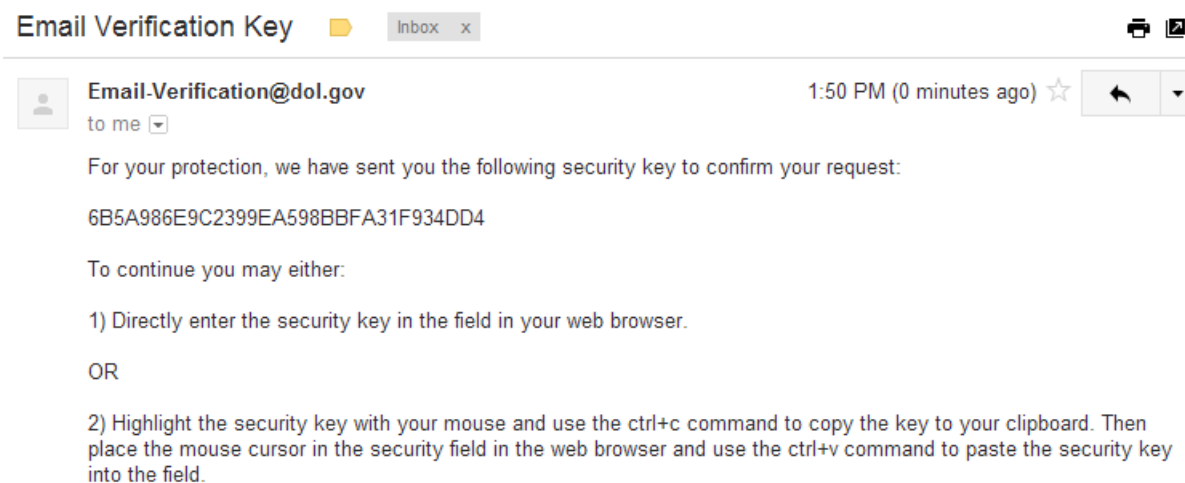
Contact Information

* First Name	<input type="text" value="John"/>	* Street/P.O. Box	<input type="text" value="123 Street Name"/>
* Last Name	<input type="text" value="Smith"/>	* City	<input type="text" value="Denver"/>
* Title	<input type="text" value="Representative"/>	* Country	<input type="text" value="USA"/>
* Phone	<input type="text" value="303-555-5555"/>	* State	<input type="text" value="Colorado"/>
Ext.	<input type="text"/>	* Zip Code	<input type="text" value="80227"/>
*Email Address	<input type="text" value="john@companyname.com"/>		


(To continue to the next step, the email address provided above must be valid and accessible. For verification purposes a security key will be sent to this email address and the form cannot be completed until the security key is retrieved.)

(* Required Fields) [Cancel and return to menu](#)

MSHA will send you an email verification. Your security number is unique.



Enter your security key.




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Notification of Representative of Miners

Step 1: Mine Information > **Step 2: Representative Information** > Step 3: Add Alternative Representatives > Step 4: Summary

For verification purposes, a security key has been emailed to the address you provided. Once you receive that email, please enter it below to continue. This key is necessary to "electronically sign" this form. It may take a few moments to receive the email.


Security Key

DO NOT CLOSE THIS BROWSER WINDOW. You must leave this browser window open until you receive the security key. Depending on your email system, this may take up to several minutes. If you close this window before receiving the security key, the key will become invalid and you must go through the registration process again.

(* Required Fields)

[Cancel and return to menu](#)

Step 3 – Add Alternative Representatives (if applicable).




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Notification of Representative of Miners

Step 1: Mine Information > Step 2: Representative Information > **Step 3: Add Alternative Representatives** > Step 4: Summary

Step 3: Add Alternative Representatives

***Scope of Authority:**
☒ I certify that I am representative of miners for all purposes of the Federal Mine Safety and Health Act of 1977.
☐ I certify that I am representative of miners but that my authority is subject to limitations.


In my absence, I will allow for the following to serve as representative in my absence: [Add Representative](#)

None Listed

(* Required Fields)

[Cancel and return to menu](#)

Step 3 – Scope of authority


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Notification of Representative of Miners

Step 1: Mine Information > Step 2: Representative Information > **Step 3: Add Alternative Representatives** > Step 4: Summary

Step 3: Add Alternative Representatives

Scope of Authority:
☐ I certify that I am representative of miners for all purposes of the Federal Mine Safety and Health Act of 1977.
☒ I certify that I am representative of miners but that my authority is subject to limitations.

Authority Limitations:

In my absence, I will allow for the following to serve as representative in my absence: [Add Representative](#)

None Listed

(* Required Fields) [Cancel and return to menu](#)

Add an alternative representative.

The screenshot shows the MSHA website's 'Add Alternative Representatives' form. The header includes the MSHA logo, 'UNITED STATES DEPARTMENT OF LABOR', and navigation links like 'Subscribe to E-mail Updates', 'Advanced Search', and 'Find It In MSHA'. The main content area is titled 'Notification of Representative of Miners' and shows the progress: 'Step 1: Mine Information > Step 2: Representative Information > Step 3: Add Alternative Representatives > Step 4: Summary'. The form is for 'Step 3: Add Alternative Representatives' and has two radio buttons for 'Individual' (selected) and 'Organization'. Under 'Contact Information', there are fields for First Name (Nancy), Last Name (Brown), Title (New Title), Street/P.O. Box (123 Street Address), City (Denver), Country (USA), State (Colorado), and Zip Code (80227). At the bottom, there are buttons for 'Add Representative', 'Return to Representative summary page', and a link for 'Cancel and return to menu'.

Notification of Representative of Miners

Step 1: Mine Information > Step 2: Representative Information > **Step 3: Add Alternative Representatives** > Step 4: Summary

Step 3: Add Alternative Representatives

☒ Individual ☐ Organization

Contact Information

* First Name: Nancy

* Last Name: Brown

* Title: New Title

* Street/P.O. Box: 123 Street Address

* City: Denver

* Country: USA

* State: Colorado

* Zip Code: 80227

Add Representative

Return to Representative summary page

(* Required Fields)

[Cancel and return to menu](#)

You can add multiple alternative representatives that will display in the grid.

This screenshot shows the same MSHA website form, but at a later stage. It includes the 'Scope of Authority' section with two radio buttons: 'I certify that I am representative of miners for all purposes of the Federal Mine Safety and Health Act of 1977.' (selected) and 'I certify that I am representative of miners but that my authority is subject to limitations.' Below this is a text area for 'Authority Limitations: Enter limitations'. At the bottom, there is a table showing the added representative, Nancy Brown, with links to 'Delete' and 'Edit'. Navigation buttons '<< Back' and 'Next >>' are at the very bottom.

Notification of Representative of Miners

Step 1: Mine Information > Step 2: Representative Information > **Step 3: Add Alternative Representatives** > Step 4: Summary

Step 3: Add Alternative Representatives

Scope of Authority:

☒ I certify that I am representative of miners for all purposes of the Federal Mine Safety and Health Act of 1977.

☐ I certify that I am representative of miners but that my authority is subject to limitations.

Authority Limitations: Enter limitations

In my absence, I will allow for the following to serve as representative in my absence: [Add Representative](#)

Name	Type	Address		
Nancy Brown, New Title	Individual	123 Street Address, Denver, CO 80227	Delete	Edit

<< Back Next >>

Confirm the information is correct and enter name to sign the document.

Representative Information Edit	
Representative Type	Individual
Name	Test Test, Test
Address	123 Street Address Denver, CO 80227
Phone	(303) 555-5555
Email Address	amy.parker@cns-inc.com
Authority limitations	Enter limitations

Alternative Representatives Information Edit		
Name	Type	Address
Nancy Brown, New Title	Individual	123 Street Address, Denver, CO 80227

Signature	
REPRESENTATIVE OF MINERS I certify that copies of all information filed contained within this filing have been delivered to the operator of the affected mine, prior to or concurrently with the filing of this statement. I certify that all information filed is true and correct.	
Signature of Official completing Representative of Miners	Title Date
Test Test <input type="text"/> (type name exactly as shown)	10/1/2012
Test Test	

Once submitted, an E-document number is assigned. This is a unique number used by MSHA to show that the filing was completed.

Notification of Representative of Miners		
The E-Document Number for this submission is #1620814. This number is your confirmation that MSHA has received your filing. This form has been submitted to MSHA. Please print a copy of this form for your records.		
Mine Information		
Mine Id	1001900	
Name of Mine Company	DeAtley Crushing Co	
Name of Mine	Plant 4	
City	Lewiston	
County	Nez Perce	
Representative Information		
Representative Type	Individual	
Name	Test Test, Test	
Address	123 Street Address Denver, CO 80227	
Phone	(303) 555-5555	
Email Address	amy.parker@cns-inc.com	
Authority limitations	Enter limitations	
Alternative Representatives Information		
Name	Type	Address
Nancy Brown, New Title	Individual	123 Street Address, Denver, CO 80227

Instructions for Completing MSHA Form 2000-238

This form is a written declaration of any person or organization which represents two or more miners at a coal or other mine for the purposes of the Act. The use of this form is voluntary in complying with 30 C.F.R. § 40.3.

Item 1. Type of filing.

Check the box "initial filing" if a mine operator has not had a miners' representative designated under 30 C.F.R. Part 40 or the appropriate information under Part 40 was not submitted to MSHA. For all other filings with MSHA concerning a miners' representative designation, check the "Updates" box. If the miners' representative is uncertain about the type of filing, check the box "Unknown." This box should be used sparingly.

Item 2. Confidential Designation.

This item is completed only if the two miners who are designating the individual or entity as their miners' representative want their identities to remain confidential, i.e., an anonymous designation. Check the box if the miners want a confidential designation.

Item 3. Designation. (REQUIRED).

This item must be completed. Provide the name and other information identified in Item 3 for the individual or the organization (and the title of the position of the representative in the organization) that the two miners have designated under Part 40.

Item 4. Mine Operator's or Contractor's Name and ID. (REQUIRED).

The name of the mine operator or contractor is required to identify the mine that the miners have designated this representative for the purposes provided in the Federal Mine Safety and Health Act of 1977 (Mine Act). The MSHA assigned Mine ID or Contractor ID number must be filled in to verify that MSHA has the correct mine for this representative.

Item 5. Scope of Designation.

Miners' representative may serve for all or selected purposes under the Mine Act. Check the appropriate box for the miners' representative designated in Item 3. If the section of the Mine Act is not identified, check the "other" box and fill in the information provided on the form.

Item 6. Additional or Alternate Representatives.

Check the box if you are providing any additional or alternate representatives. If you are providing more than two, you may print out this form and add as many representatives on a supplemental page and mail the form to the appropriate Coal or Metal and Nonmetal Safety and Health District Manager.

Item 7. Designated By. (REQUIRED).

Item 7 is required to be completed. If Item 2 is checked, then the information in Item 7 will be kept confidential.

Privacy Act Statement

30 C.F.R. § 40.3 authorizes the collection of this information. This information will be used by MSHA inspectors to contact the miners' representative once the inspector is at the mine before conducting an inspection. This information also permits MSHA to verify that miners' representative was designated by two miners who work at the mine. This is very important for confidential or anonymous designations. Section 103(f) and (g) of the Mine Act, (30 U.S.C. § 813(f) and (g)) and 43 FR 29508, 29509. Submission of the items identified in the instructions as required is mandatory and failure to submit the required information may delay MSHA ability to verify the designation of the miners' representative and delay the miners' representative participating in inspection activities at the mine.

Reset Form

Representation of Miners Designation Form

U.S. Department of Labor
Mine Safety and Health Administration



Approved OMB Control Number 1219-0042, is approved for use through June 30, 2014

Purpose: 30 CFR 40.3 authorizes a written declaration of any person or organization which represents two or more miners at a coal or other mine.
Public reporting burden for this collection of information estimated to average 10 minutes per response; including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data need, and completing and reviewing the collection of information. Send comments regarding the collection of information, including suggestions for reducing this burden, to the Mine Safety & Health Administration, U.S. Department of Labor, Records Management Branch, 1100 Wilson Boulevard, Arlington, Virginia 22209-3939. Persons are not required to respond to this collection of information unless it displays a currently OMB Control Number. The DOL offers no pledge of confidentiality in association with these information collections unless Item 2 is checked and DOL will keep the miners' names and contact information confidential (Item 7) if Item 2 is checked. Section 103(f) and (g) of the Federal Mine Safety and Health Act, as amended, (30 U.S.C. § 813(f) and (g)) and 43 FR 29508, 29509. As a practical matter, the DOL would only release this information in accordance with provisions of the Freedom of Information Act (5 U.S.C. § 552); the Privacy Act (5 U.S.C. § 552a); and attendant regulations, 29 C.F.R. parts 70 and 71. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: **Records Management Branch, Mine Safety and Health Administration, 1100 Wilson Boulevard, Arlington, VA 22209-3939. DO NOT SEND COMPLETED FORMS TO THIS ADDRESS.** Instructions for this form contain further information on the need and use of this form. This is an optional form. **A false or representation is punishable under Section 110(a) and (f) of the Federal Mine Safety and Health Act, as amended (30 U.S.C. §820 (a) and (f)).**

Item 1: ☐ Initial Filing ☐ Update ☐ Unknown

Item 2: ☐ Confidential

Item 3: Designation Type: ☐ Individual ☐ Organization

Representative Name: _____ Title: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Telephone (____) _____ Email: _____

Item 4: Mine Operator's or Contractor's Name _____
Mine Address _____
Mine MSHA ID No.: _____

Item 5: Scope of Designation: ☐ The person or position named as the representative of miners is the representative for all purposes of the Act.

☐ The representative's authority is limited to: ☐ 101 (c)
☐ 103 (c)
☐ Other _____

Item 6: Additional or Alternate Representatives: ☐

1. Name: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Telephone: (____) _____ Email: _____
2. Name: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Telephone: (____) _____ Email: _____

Item 7. Designated By: (Name of two or more miners who work at the mine)

1 - Name: _____	2 - Name: _____
1 - Telephone: _____	2 - Telephone: _____

I certify that I have been designated as representative by at least two miners who work at the mine. I certify that all information being filed is true and correct. A copy of this form has been delivered to the mine operator of the affected mine prior to or concurrently to the filing of this statement.

Signed: _____ Date: _____

MSHA Form 2000-238, April 2011

CHAPTER 3 – DISCRIMINATION UNDER SECTION 105(c)

IMPORTANT

In many ways, Section 105(c) of the Act works like discrimination in other contexts such as the Civil Rights Act. However, it is important to remember that you are protected under this law only where your protected activity falls within the Act, its rules and standards, or is otherwise related to safety and health in the mine.

The provisions of the Act relating to discrimination and interference are intended to make sure that both you and the miners at your mine are active participants in your own safety and health by protecting you from suffering adverse actions as a result of your active participation.

NOTE

Discrimination on the basis of race, sex, age, religion, handicap, union activity, or any other non-mining status, is *not* covered by Section 105(c) of the Act. However, MSHA may assist you in contacting the appropriate agency for relief.

You, the miners at your mine and job applicants have a right to be protected from discriminatory treatment by an employer for engaging in activities that are covered under the Act. There are many different forms of protected activity such as:

- Reporting safety hazards to your employer,
- Participating as a miners' representative in safety matters,
- Reporting safety hazards to MSHA,
- Refusing to perform unsafe work, and
- Any other kind of conduct that promotes the maintenance of safe or healthy working conditions in the mine.

Section 105(c)(1) of the Act says:

"No person shall discharge or in any manner discriminate against or cause to be discharged or cause discrimination against or otherwise interfere with the exercise of the statutory rights of any miner, representative of miners or applicant for employment in any coal or other mine subject to this Act because such miner, representative of miners or applicant for employment has filed or made a complaint under or related to this Act, including a complaint notifying the operator or the operator's agent, or the representative of the miners at the coal or other mine of an alleged danger or safety or health violation in a coal or other mine, or because such miner, representative of miners or applicant for employment is the subject of medical evaluations and potential transfer under a standard published pursuant to section 101 or because such miner, representative of miners or applicant for employment has instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding, or because of the exercise by such miner, representative of miners or applicant for employment on behalf of himself or others of any statutory right afforded by this Act."

This provision prohibits persons from discharging, discriminating against or otherwise interfering with your statutory rights or the right of any miner or applicant for mine work for making complaints under or related to the Act.

NOTE

In Meredith et. al. v. Federal Mine Safety and Health Review Commission (FMSHRC), 177 F.3d 1041 (DC Cir. 1999), several miners alleged that certain named MSHA officials had unlawfully discriminated against miners for exercising rights protected by the Mine Act. The Court found that the Mine Act's anti-discrimination provision does not apply to MSHA employees for actions taken under color of their authority.

Understanding Discrimination Under Section 105(c) of the Act

Section 105(c) has essential elements that have to be established, through an investigation process, after a formal complaint is filed with MSHA. The investigation must prove that a member of the protected class (miner, representative of miners, applicant for mine work) engaged in a protected activity (made safety complaints, refused to work in unsafe conditions, etc.) and suffers an adverse action (fired, demoted, etc.) that was motivated in any part by the protected activity.

These essential elements are:

- Protected Class

The Act protects specifically identified classes of people from discrimination. Protected classes include: miners, applicants for mining positions, or miners' representatives.

Miner means any individual working in a coal or other mine.

For the purpose of Section 105(c) the term miner includes foremen, supervisors, or other management officials who work at the mine.

The term miners' representative refers to a person who has been designated under Section 103(f) of the Act to accompany inspectors on walk around inspections.

For the purpose of Section 105(c) the term miners' representative includes also persons representing miners in a labor management context under the NLRA (National Labor Relations Act).

- Protected Activities

The Act provides broad protections for miners who report safety and health issues to their employer or to MSHA. These protections are part of the enforcement scheme of the statute which appears in Title I of the Act and extend to not only protective actions by the miner on their own behalf, but also on behalf of others.

Examples of some of the most common protected activities include:

- ✓ Reporting safety complaints to the operator or MSHA
- ✓ Participating in an MSHA inspection or investigation
- ✓ Testifying in a legal proceeding
- ✓ Being subject of medical examination and potential transfer
- ✓ Enforcement of the training provisions of the Act
- ✓ Refusal to work in unsafe or unhealthy conditions
- ✓ Exercising any right afforded by the Mine Act

NOTE: Being injured on the job is not a protected activity under the Act; however, requesting that your injury be reported is a protected right.

- Adverse Actions

The largest number of discrimination cases involves some measurable economic loss arising from discharge, dismissal, layoff, or suspension.

There are times, however, when a complainant has been affected by a reassignment, change in shift, denial of overtime pay, or where they claim disparate treatment or harassment because of the exercise of some protected right. It is a violation of the Act when your employer takes any of the following adverse actions because you exercise a protected right.

Additional adverse actions may include:

- ✓ Demotion
- ✓ Refusal of employment
- ✓ Reduction in benefits, vacation, bonuses, or rates of pay
- ✓ Changes in pay and hours of work
- ✓ Threats of reprisal
- ✓ Transfer to another position at a lower rate of pay than that received immediately before the transfer

Economic cases tend to be more easily dealt with than non-economic ones, possibly because injuries can be more easily identified, and remedies more easily determined. Also, economic losses are readily recognizable as tangible injuries which can be remedied.

At the same time, non-economic injuries of which the general work force is aware can affect the operation of safety and health in the mines.

When a mine operator discriminates against a miner who has exercised protected activity by changing working conditions, other employees often observe and learn from that miner's experience. The result may have a chilling effect on participation which the work force will demonstrate in the areas of safety and health.

- Work Refusals

In a work refusal case, a miner claims that he or she was given a work assignment which they reasonably (and in good faith) believed would result in injury or death. In short, the miner was assigned a particular task but refused to do it because they believed that it was unsafe or unhealthy.

Work refusal case investigations are difficult and sensitive because an employer has a right to direct the work force (including the right to assign work).

A miner's refusal to perform a work assignment sets up a natural conflict between the employer's right to assign work and the legitimate concern of the miner for his or her own safety and health or the safety and health of others.

You, the miner, carry the burden of proof to show that the refusal rests on a reasonable and good faith belief that performing the work would result in a serious threat to your (or others) safety or health.

In these instances, it is important to communicate your concerns to the supervisor or person giving the assignment, unless you can show that to do so would be futile. You should ask for alternate work to give the supervisor an opportunity to address your concerns.

- Constructive Discharge

Constructive discharge is a form of protected activity that occurs when the employer creates or maintains employment conditions which are so intolerable that a reasonable person could not continue to function under them.

In the context of the Mine Act, this prohibited conduct occurs when the mine operator maintains these conditions in a retaliatory effort to stop you or the miners at your mine from exercising your protected rights.

Like the right of work refusal, leaving the workplace would seem to challenge the legitimate authority of the employer to direct the work force and maintain discipline. At the same time, your conduct in leaving employment is reactive to the conditions created by the employer.

Constructive discharge is both the exercise of a protected right (the right to leave the workplace) as a reaction to the unjustified conduct of the employer in maintaining intolerable working conditions as well as an adverse action or discriminatory act on the part of the employer in forcing an employee to leave his or her employment.

NOTE

A claim of constructive discharge is an extraordinary claim, and you are required to prove that the conditions were intolerable, necessitating that you remove yourself from the environment, for example, to protect your own life or avoid serious injury. Leaving one's work assignment or job site for a reason that does not, may subject you to termination for job abandonment. You should make every effort to resolve the situation with the employer before taking this extraordinary step.

- **Nexus**

Nexus is the relationship or connection between the protected activity and the adverse action.

Some factors considered in this determination include:

The employer's knowledge of the miner engaging in protected activity

Hostility on the part of the employer in relation to the protected activity

Coincidence in time between the exercise of the protected activity and the claimed adverse action

- **Operators Defense**

The mine operator has a right to address or provide information regarding the allegations of discrimination made by you.

INTERFERENCE CLAIMS UNDER SECTION 105(c)

Section 105(c) prohibits undue interference with the exercise of statutory rights. Conduct may violate the Act's interference prohibition if, under the totality of the circumstances, it can be reasonably viewed as tending to interfere with the exercise protected activity.

An operator or other person who engages in conduct that may tend to chill the exercise of protected activity can defend its action by demonstrating a legitimate and substantial reason for taking the action that outweighs the interference with Act rights.

Interference claims differ from retaliation cases.

First, unlike retaliation cases, it is not necessary to show that the miner engaged in or was suspected of engaging in protected rights in order to show an interference violation. As long as there is conduct that tends to chill protected activity, there may be an interference violation.

Second, unlike retaliation cases, it is not necessary to show that a miner suffered an adverse employment action in order to show unlawful interference. The basis of an interference violation is the operator (or other person's) conduct that interferes with the exercise of protected activity, whether or not such conduct would be an "adverse action" under the retaliation cause of action.

Third, unlike retaliation claims, interference claims do not turn on the operator's motive or intent; if a mine operator's comments or conduct interfere with the free exercise of statutory rights, regardless of the operator's intent, there may be an interference violation.

Interference violations may take several forms, including threats of discipline or job loss conditioned on a miner's protected activity, interrogations regarding past or future protected activity, improper surveillance of protected activity, unlawful promises or conferral of benefits to miners abstain from protected activity, and other policies or practices that have the effect of dissuading or preventing workers from exercising statutory rights.

Right to File Under Section 428 of the Black Lung Benefits Act

Section 428 states:

"No operator shall discharge or in any other way discriminate against any miner employed by him by reason of the fact that such miner is suffering from pneumoconiosis. No person shall cause or attempt to cause an operator to violate this section. For the purposes of subsection the term 'miner' shall not include any person who has been found to be totally disabled."

Section 428 (Title IV) of the Act prohibits discrimination against coal miners (not applicants for employment) who are suffering from pneumoconiosis. That Section is administered by the Department of Labor's Office of Workers' Compensation Programs (OWCP), Division of Coal Mine Workers' Compensation.

MSHA has a Memorandum of Understanding (MOU) with the OWCP's Black Lung Office to provide additional receiving locations for discrimination complaints filed under Section 105(c) of the Mine Act or Section 428 of the Black Lung Benefits Act.

Procedures for Filing a Discrimination Complaint Under Section 105(c) of the Act

If you believe you have been discriminated against by suffering some kind of adverse action because you or the miners at your mine exercised a protected right under the Act, you should file a complaint with MSHA.

A complaint of discrimination under Section 105(c) may be filed at any:

- MSHA District Office,
- MSHA Field Office,
- MSHA Headquarters office, or
- OWCP Black Lung Office.

Discrimination Under Multiple Statutes Complaints

MSHA also has an MOU with the National Labor Relations Board (NLRB) for coordinating complaints received which allege violations of both the Mine Act and the National Labor Relations Act.

MSHA's Technical Compliance and Investigations Office (TCIO) is responsible for coordination and consultation in the handling of the discrimination complaints covered by the agreements outlined in the MOU's with the OWCP's Black Lung Office and NLRB's Division of Operations Management.

Important Timeframes for Filing a Complaint of Discrimination

- If you are a representative of miners and you believe that discrimination has occurred as a result of exercising your rights, you must file a discrimination complaint within **60 days** of the discriminatory act.

NOTE: You may have additional time to file your complaint under special circumstances. If you were not aware of the discrimination during the **60 day** period, or other factors prevented you from filing your complaint, your delay may be excused if you have a good reason.

- You should always try to file the complaint during the **60 day** period or as soon as possible if the **60 days** have expired.

How MSHA Receives Complaints

In Person

If you come into an MSHA office with questions concerning an alleged discriminatory action, you will be referred to the complaint processor or other designated person.

The general nature of the complaint will be discussed with you and you will be provided the appropriate forms and other documents needed to file your complaint. The complaint

processor will assist you in filling out the forms and filing your complaint appropriately. The discrimination packet consists of:

- Discrimination Complaint Forms 2000-123 and General Instructions for Completion of Complaint Form 2000-123
- Discrimination Report Form 2000-124
- The Federal Mine Safety and Health Review Commission Rules of Procedure
- Privacy Act statement

If the alleged discriminatory action resulted in a loss of wages, the complaint processor also provides the following:

- Information on Backpay for Miners
- Claimant Expense and Search for Work and Interim Earnings Report

You will also receive a copy of A Guide to Miners' Rights and Responsibilities.

By Telephone

When calling an MSHA Office to discuss your complaint, the complaints processor may advise you to come into the MSHA office and they will assist you in preparing and filing a discrimination complaint. If you cannot come to an MSHA office, then a cover letter will be prepared, enclosing all the proper forms and documents (as stated above) and sent to you via certified mail return receipt requested.

By Mail

A signed letter or written document received in any MSHA office, regardless of its form, which alleges a discriminatory act, will be treated as a complaint filed with the Secretary of Labor under Section 105(c). The complaint processor will transfer the submitted information to the official MSHA Complaint Forms 2000-123 and -124 and attach them to your incoming letter. The complaint processor will prepare a cover letter and send all of the proper forms and documents (as stated above) to you for review and signature.

If more information is needed to complete the required forms, the complaint processor will contact you by telephone or mail to obtain the information. Please notify the individual receiving your complaint or the investigator assigned to your complaint if you are represented by a representative or personal attorney or list them on your complaint form.

The Importance of Proper Documentation

It is important that you document anything relating to your case that may assist MSHA during the investigation of your complaint. Maintain a log or notes with relevant details such as names, dates, places, times, events, and actions of/or relating to the discrimination.

Financial Documentation

Thorough documentation is essential if the discrimination has affected you financially. Whether it is because of a demotion, firing, or loss of overtime, these financial losses could possibly be returned to you if they are properly documented.

Visit Chapter 2, Exhibit 2-6, Information on Backpay for Miners, <http://www.msha.gov/READROOM/HANDBOOK/PH05-I-4.pdf> for more information about backpay and other financial losses.

What Happens When MSHA Receives Your Complaint

The following occurs when MSHA receives a complaint of discrimination filed under Section 105(c);

- A case number is assigned.
- An investigator is assigned to the case.
- A copy of the complaint is sent to the mine operator.
- A copy is sent to the individuals named in the complaint.

The investigation will begin within **15 days** of the date of receipt.

A notification letter and a copy of your completed MSHA Complaint Form 2000-124 and the Federal Mine Safety and Health Review Commission Rules of Procedure are provided to everyone you named in your complaint.

NOTE: This is not a confidential complaint like a hazard complaint; the operator of your mine will be notified of the complaint.

When MSHA receives a complaint of discrimination filed under Section 105(c), a case number and investigator is assigned and a copy of the complaint is sent to the mine operator and the individuals named in the complaint. The investigation will begin within **15 days** of the date of receipt.

Upon receipt of a signed discrimination complaint, MSHA will assign a special investigator and notify you in writing acknowledging receipt of your complaint. This is not a confidential complaint like a hazard complaint; the operator of your mine will be notified of the complaint. A copy of the notification letter and the complaint is provided to everyone you named in your complaint.

Respondent's notification letter will include as enclosures only the completed Complaint Form 2000-124 and the Federal Mine Safety and Health Review Commission Rules of Procedure.

A sample notification letter is on the following page.

Your Name
Street Address
City, State, Zip Code

Re: Discrimination Complaint Case Number _____

Dear Mr./Ms.

The discrimination complaint you recently filed with the Mine Safety and Health Administration (MSHA) (copy enclosed) has been assigned to _____, Special Investigator, (--- --- ---). Any questions you have concerning this case should be directed to this investigator.

The investigator will contact you concerning the investigation of your complaint. Please retain any evidence related to your complaint, such as time cards, notifications of personnel actions, disciplinary slips, notes, letters, memorandums, check stubs, etc. Also, it would be helpful if you would make a list of names, addresses and telephone numbers of individuals who can support your complaint, together with a brief summary of what each individual should know concerning the alleged discrimination.

Please give this information and your full cooperation to the investigator. Such action on your part will aid in an accurate and speedy completion of the investigation.

Sincerely,

(Complaint Processor or person to be designated by the District Manager)

Enclosures (2)
Complaint Forms 2000-123 and 2000-124

The MSHA special investigator will contact you for an initial interview. During the interview you can provide the investigator with all the pertinent facts regarding your complaint.

NOTE: While all information obtained during a special investigation is confidential, company officials may also be interviewed during the investigation.

Temporary Reinstatement

Sometimes it may be several months between the time the complaint is filed and a determination is made in the case. The purpose of temporary reinstatement was to protect miners from the adverse and chilling effect of loss of employment while the complaint is being investigated. It also eases the financial hardship miners would suffer if he or she is unemployed for that length of time.

The right to temporary reinstatement is an important independent right provided by Section 105(c)(2) of the Act.

When a discrimination complaint is investigated, you may be asked if you are interested in temporary reinstatement.

Under this provision, the Secretary of Labor may file a petition with the Federal Mine Safety and Health Review Commission requesting that you be returned to your job pending the full evidentiary hearing on the discrimination claim.

For this right to be sought, MSHA must be able to show that the claim of discrimination is not frivolously brought.

The test for measuring whether a case is not frivolously brought requires determining whether there is “reasonable cause to believe” that the discharge was motivated in part by the exercise of protected activity. “Reasonable cause to believe” is also equated with “whether a miner’s complaint appears to have merit.”

Importantly, the determination at the temporary reinstatement stage as to whether the miner’s complaint was “not frivolously brought” is a different and independent inquiry from the ultimate determination as to whether discrimination has occurred.

NOTE: This standard is less demanding than the standard of proof applied in a hearing on the merits of the underlying discrimination claim. In a temporary reinstatement hearing, it is not the judge’s or the Commission’s duty to resolve conflicts in the testimony.

IMPORTANT

It has been litigated and settled that applicants for employment do not have temporary reinstatement rights. “. . . an applicant for employment is not entitled to temporary reinstatement.” [Lone Mountain Processing (1998)]

You have a right to withdraw your complaint at any time during the investigation or before a determination in your case has been made. The request for withdrawal must be in writing and signed. Requests to withdraw complaints received through the mail or otherwise not signed in the presence of the special investigator must be notarized.

The following is an example of a request for discontinuance of a discrimination complaint.

DISCONTINUANCE OF DISCRIMINATION COMPLAINT

CASE NO. _____

My name is _____,

and I am the listed complainant of the discrimination complaint, _____

versus _____ filed _____.

I wish to discontinue any additional action concerning this complaint. I furthermore state that I make this request voluntarily and without coercion from anyone. My reasons for requesting to withdraw my complaint are explained below, in the document attached, or have been provided in a statement to the investigator.

(Signature)

_____ Day of _____
(Month/Year)

(Witness)

(Investigator)

-----AND/OR-----

Subscribed and sworn to before me this _____ day of _____ 20____.

NOTARY PUBLIC

During the course of the investigation the MSHA investigator assigned to your complaint may contact you several times to obtain additional information. You will be notified, in writing, within **90 days** of MSHA's determination in your case.

NOTE: Section 105(c)(3) of the Act does not restrict MSHA from later notification, and your rights are not affected by delays beyond **90 days**.

Instituting Your Right to File for Proceedings Under Section 111

Under Section 111 of the Act, you and the miners at your mine are entitled to pay if you are idled because of a withdrawal order issued to the operator.

If you are working on the shift when a withdrawal order is issued, and you are idled by the withdrawal order, you are entitled to your regular pay for the time lost; but only for the balance of the shift.

If the withdrawal order is not terminated before the next shift, all the miners on the next shift are entitled to be paid at their regular rate for the time they are idled, up to four hours.

If you are withdrawn from the mine or part of the mine and idled because the operator does not comply with any mandatory safety or health standard, you are to be paid for lost time at your regular rate for the time you are idled, or for one week, whichever is the lesser. The operator is responsible for compensation for lost time at your regular rates of pay.

If the operator fails to comply with a withdrawal order issued under the Act and keeps you working in the area where the order applies, you receive your full compensation for the time the order is issued in addition to compensation for the time you actually worked. If you are a miner working to correct the condition that resulted in the withdrawal order, then you are not working in violation of the order and are not entitled to double pay.

If you or the miners at your mine believe you are entitled to compensation but have not received it, you must file a complaint with the Commission within **90 days** after the idle period began or should have begun. The Commission's procedural rules can be found at 29 CFR 2700 or at <http://www.fmshrc.gov>. Your MSHA District Office can inform you of other possible remedies to recover compensation to which you may be entitled.

The Commission has the authority to order compensation due under Section 111 upon the filing of a complaint by you or the miners at your mine who are affected and after the opportunity for a hearing.

IMPORTANT

The exercise of this right is not a Section 105(c) exercise. It is an independent right and you must file a petition with the Commission. However, if a mine operator then discharges, disciplines, or otherwise interferes with you because you have exercised your right to file a complaint under Section 111, then you may seek remedy under the discrimination provisions under Section 105(c).

Important Timeframes for Filing for Proceedings Under Section 111

The Commission has the authority to order compensation due under this section upon the filing of a complaint by you or the miners at your mine who are affected and after the opportunity for a hearing.

According to the Commission's procedural rules, a complaint for compensation under Section 111 of the Act, 30 U.S.C. 821, shall be filed within **90 days** after the beginning of the period during which you are idled or would have been idled by the order that gives rise to the claim. The Commission may waive the **90-day** time limit in appropriate circumstances.

A complaint for compensation shall include:

- A short and plain statement of the facts giving rise to the claim, including the period for which compensation is claimed
- The total amount of the compensation claimed, if known
- A legible copy of any pertinent order of withdrawal or, if a legible copy is not available, the text of the order

Within **30 days** after service of a complaint for compensation, the operator will file an answer responding to each allegation of the complaint.

CHAPTER 4 – REQUESTING HEALTH AND SAFETY INSPECTIONS, REPORTING HAZARDOUS CONDITIONS, IMMINENT DANGERS, VIOLATIONS OF THE ACT OR HEALTH AND SAFETY STANDARDS

Right to Request an Inspection

You or a miner at your mine has the right to request an MSHA inspection if either you or a miner believes that an imminent danger, violation of the Act, or violation of a mandatory safety or health standard exists at the mine.

MSHA maintains both the “One Call Does It All” hotline and an online complaint system.

ONE CALL DOES IT ALL!

To report a hazardous condition at a mine to MSHA, call:
(800) 746-1553

You do not need to identify yourself!

You can also use the online complaint system at:
<https://lakegovprod3.msha.gov/HazardousConditionComplaint.aspx>

These services are available on a 24-hour basis, 7 days a week, 365 days a year

You or the miners at your mine can also request an inspection either by talking directly to any MSHA employee, or by calling or writing any MSHA inspector or office.

IMPORTANT!

There is a difference between a formal request for an inspection made under Section 103(g) of the Act and all other hazardous condition complaints.

Filing a Formal Section 103(g)(1) Request for Inspection

Under Section 103(g)(1) of the Act, a representative of miners or, where there is no such representative, a miner who has reasonable grounds to believe that a violation of the Act or a mandatory health or safety standard exists, or an imminent danger exists, has a right to obtain a special inspection if he or she gives notice to MSHA.

NOTE: 30 CFR 43.4 requires that any such notice must be given to MSHA in writing and must be signed by the miners' representative or the miner at the mine.

Portions of the complaint are provided to the mine operator either before or during the inspection. In most instances the complaint is re-written or typed and only identifies the condition or states that an imminent danger exists, or the information indicates that an imminent danger may exist. MSHA will immediately contact the operator about the imminent danger.

Confidentiality of a Section 103(g)(1) Request for Inspection

Your identity is **not** made known during this process.

Section 103(g)(1) of the Act states: "The name of the person giving such notice and the names of individual miners referred to herein shall not appear in such copy or notification."

In other words, "...your name or the name of any miner making the complaint, or any references to a specific work area, equipment, work shift, or any other information that might reveal the identity of the complainant on the 'Request for Inspection' remains confidential and is not provided to the mine operator."

Benefits of Filing a Formal Section 103(g)(1) Complaint

Benefits of filing a formal complaint under Section 103(g)(1) of the Act are:

- Under 30 CFR 43.6 (a), (b), and (c), you will receive a written notice from the District Manager if MSHA determines that a special inspection is not warranted, or that a special inspection is warranted but no violation or imminent danger is found.
- Under 30 CFR 43.8, you have the right to an informal review of MSHA's determination if there is a negative finding as described above.

You must file your request for informal review within **10 days** of receipt of a notice of negative finding from MSHA (See 30 CFR 43.8 and 30 CFR 43.7(b)-(d) for more information). The appeal must be in writing to the appropriate District Manager.

Appeal Process for a Formal Section 103(g)(1) Complaint

When a District Manager receives your appeal, he or she may hold an informal conference. At that time, you have an opportunity to present your views. After the meeting, the District Manager may do one of the following:

- Affirm the no violation findings and provide justification for not issuing citations or orders; or
- Require that an additional (or new) Section 103(g) investigation be conducted.

Filing a Formal Section 103(g)(2) Complaint

Section 103(g)(2) of the Act provides that, during any inspection of a mine, a representative of miners or, where there is no such representative, a miner may notify MSHA, in writing, of any violation of the Act or any imminent danger which he has reason to believe exists in the mine.

A benefit of filing a formal Section 103(g)(2) Complaint is:

Under 30 CFR 43.7(a), if MSHA refuses to issue a citation or order regarding the alleged violation or imminent danger order, you or a miner may obtain a review of MSHA's determination (See 30 CFR 43.7 (b)-(d)) for additional information.

30 CFR 43.7(b) says

"A request for informal review shall be sent in writing to the appropriate district manager within **10 days** of the date of the refusal to issue a citation or order and shall be accompanied by any supporting information the person requesting review wishes to submit."

According to 30 CFR 43.7(c)

"After receipt of the request for informal review, the district manager or his agent may hold, at his or her discretion, an informal conference where the person requesting review can present his views."

30 CFR 43.7(d) says

"After review of all written and oral statements submitted, the district manager may either affirm the refusal to issue the citation or order or may direct that a new inspection be conducted with respect to the alleged violation or imminent danger. The district manager shall furnish the person requesting review with a written statement of the reasons for his or her final disposition of the request as soon thereafter as possible. A copy of such statement shall be furnished the operator. The district manager's determination in the matter shall be final."

Filing Other Hazardous Condition Complaints

A hazardous condition complaint is any communication from anyone including a miners' representative, miner, or other interested parties, received by MSHA that does not meet the criteria for Section 103(g) and describes an alleged hazardous condition, imminent danger, violation of a mandatory safety or health standard or violation of the Mine Act.

Complaints may be received by MSHA in writing, electronically, or orally at any time.

Contact any MSHA inspector in the nearest district office, or MSHA's national hotline number (1-800-746-1553), or visit <https://www.msha.gov> and follow the links for reporting a hazardous condition.

Any complaint about a safety or health concern that is within MSHA's jurisdiction is taken seriously, no matter who makes the complaint or how MSHA receives the complaint.

MSHA will inspect the mine as soon as possible to determine if the alleged violation or imminent danger exists but can only do so if the complaint provides enough information to identify the location and the hazard of concern.

MSHA is not required to give the operator a copy of any complaint categorized as "other complaint" and the operator may not be informed that a complaint has been made. MSHA will issue a citation if it finds a violation or a withdrawal order if it finds that an imminent danger exists.

CHAPTER 5 – YOUR RIGHT TO BE INFORMED OF AND PARTICIPATE IN ENFORCEMENT ACTIVITIES

Section 103(f) of the Act gives you, as a miners' representative, the opportunity to participate in mine health and safety inspections as well as conferences before and after the inspection occurs. Congress believed that you, with your knowledge of the work site, could provide MSHA inspectors with a great deal of useful information. They also believed that if you observed what happened during an inspection, you would better understand how the Act's safety and health requirements work.

Miners' representatives have the right to accompany inspectors on any type of 103(a) inspection involving direct enforcement activities such as:

- Regular inspections;
- Spot inspections;
- Inspections conducted at the request of miners or their representatives;
- Inspections of especially hazardous mines; and
- Inspections made in conjunction with accident investigations.

For additional information, visit:

<http://www.msha.gov/REGS/COMPLIAN/PPM/PDFVersion/PPM%20Vol%20I.pdf>

Part 50 Audits

You may not participate in Part 50 audits because it involves review and inspection of sensitive personal medical records. Only the MSHA auditors may have access to that information.

Right to Pay While Participating in an Inspection

If you are a representative who is also an employee of the mine, you have the right to be paid for time spent participating in health and safety inspections at your mine under certain circumstances.

NOTE: You are not entitled to pay if you are not an employee of the operator.

Exceptions to Compensation for Multiple Representatives

The operator is only required to pay one representative of miners during an inspection.

- If two or more MSHA inspectors are at the mine at the same time, and do not travel together, a representative may travel with each inspector or with a separate group of inspectors. Under these circumstances, each representative participates in the inspection without loss of pay.

- When multiple operators are present at the mine and the work or activities of one operator may affect the safety and health of the other operator(s), a miners' representative of each of the operators has the right to accompany an MSHA inspector under Section 103(f). One representative of miners of each operator is entitled to pay for the time spent accompanying the MSHA inspector during the inspection.

If you are exercising your rights under Section 103(f) of the Act and you are not being compensated while participating in the health and safety inspection, you should contact your local MSHA office for assistance.

Generally, the law does not provide for pay when you participate in non-inspection activities such as technical consultations, equipment demonstrations, off-mine property meetings, and discussion of research.

Prohibition of Advance Notice

Section 103(a) of the Mine Act prohibits giving advance notice of MSHA inspections. Section 103(a) of the Mine Act states that:

"Authorized representatives of the Secretary...shall make frequent inspections and investigations in coal or other mines each year..."

and that:

"In carrying out the requirements of this subsection, no advance notice of an inspection shall be provided to any person..."

Volume I of MSHA's Program Policy Manual (PPM) notes that there are limited occasions when advance notice is contemplated by the Mine Act. For example, under Section 103(g)(1) of the Act, where a representative of the miners or a miner gives notice of what he believes to be an imminent danger, the operator or his agent must be notified and such notification will almost always have the effect of indirectly giving notice of an inspection.

Availability to Participate in Inspections

If you are a miners' representative who is not an employee of the mine, MSHA will not notify you when or what time an inspection will occur. The only enforceable access you have to the mine site is with the MSHA inspector during an inspection. You have to be available when the inspector arrives at the mine to gain access. To exercise your right to review records, that is outside of the time an inspection is underway, you must make an effort to communicate that request to the mine operator to work out a time or location for the review.

MSHA is required to inspect the entire mine which includes conducting inspections during all time periods when the mine is in operation.

For example, if a mine has a shift that works from midnight to 8:00 a.m., MSHA must inspect the mine at least once during that shift.

If the mine has maintenance shift that works over the weekend, MSHA will inspect during that time as well.

MSHA may send more than one inspection team to your mine at the same time.

If more than one inspection team is present, more than one miners' representative needs to be available. While miners and the operator each have a right to a representative for each inspector or inspection team, an MSHA inspector has the authority to limit the total number of representatives who may accompany him or her during an inspection.

If there are specific problem areas or concerns at the mine, the MSHA inspector may request that additional persons familiar with the mine accompany them.

Any miners' representatives, while accompanying an inspector, have the right of entry into "posted" or "dangered-off" areas in the performance of their duties, but should do so with caution.

Pre-inspection Conference

On the first day of the inspection, the MSHA inspector will notify the representatives of the operator and miners of the type of inspection to be conducted and schedule a time for a pre-inspection conference.

During the pre-inspection conference the inspector should inform you (if you are a designated representative) and the operator of the procedures for requesting a safety and health conference under 30 CFR 100.6(b) and your rights to participate.

NOTE: To carry out an orderly and thorough inspection, an inspector will not allow unavailability of a miners' representative or a representative of the operator to delay the start of an inspection.

Citations and Orders

Section 104(a) of the Act says that, "If, upon inspection or investigation, the Secretary or his authorized representative believes that an operator of a coal or other mine subject to this Act has violated this Act, or any mandatory health or safety standard, rule, order, or regulation promulgated pursuant to this Act, he shall, with reasonable promptness, issue a citation to the operator."

"Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the Act, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The requirement for the issuance of a citation with reasonable promptness shall not be a jurisdictional prerequisite to the enforcement of any provision of this Act."

Section 104(b) says that, "If, upon any follow-up inspection of a coal or other mine, an authorized representative of the Secretary finds

- (1) that a violation described in a citation issued pursuant to subsection (a) has not been totally abated within the period of time as originally fixed therein or as subsequently extended and
- (2) that the period of time for the abatement should not be further extended, he shall determine the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to immediately cause all persons, except those persons referred to in subsection (c), to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated."

Limited Right to Access Restricted Areas

Section 104(c)(3) of the Act gives you a limited right to access restricted areas as the miners' representative.

Section 104(c) of the Act states:

"The following persons shall not be required to be withdrawn from, or prohibited from entering any area of the coal or other mine subject to an order issued under this section:

- (1) any person whose presence in such area is necessary, in the judgment of the operator or an Authorized Representative of the Secretary, to eliminate the condition described in the order;
- (2) any public official whose official duties require him to enter such area;
- (3) any representative of the miners in such mine who is, in the judgment of the operator or an authorized representative of the Secretary, qualified to make such mine examinations or who is accompanied by such a person and whose presence in such area is necessary for the investigation of the conditions described in the order. ."

Post-Inspection Conferences

The inspector will schedule and conduct a post-inspection conference.

The conference should include:

- A summary of all enforcement actions taken, including the root causes of hazards associated with violations.
- Any observations concerning conditions or practices.
- A discussion of accidents at the mine and the available results of any samples or surveys taken during the inspection.

A means to prevent recurrence of violations, hazards, and accidents should be formulated by the mine operator and fully discussed by all parties. The inspector's immediate supervisor should be made aware of the post-inspection conference date and briefed immediately regarding concerns voiced during any portion of an inspection or investigation.

While you have a right to participate in inspections or conferences, this right does not include participation in investigations of alleged discrimination or knowing and willful violations of the Act or mandatory health and safety standards. These types of investigations are confidential and neither the company nor the miners' representative generally has a right to attend any interviews or be present.

Your Right to Request a Safety and Health Conference

You have the right to review all citations and orders that are issued at your mine and request a conference about them. Such requests must be made within **10 days** of the issuance of the citations and/or orders. All citations and orders are required to be posted at the mine. You may also request to be notified and participate in any conference held and submit additional information. MSHA will consider all relevant information submitted in a timely manner and upon conclusion of the conference or expiration of conference request period, unless the citation/order was vacated as a result of the conference, a proposed penalty will be assessed. You also have a right to a copy of the proposed assessment for the citation/order.

If you want to request a Safety and Health Conference, send a letter to the appropriate District Manager indicating that you are requesting a conference regarding the citation(s)/order(s) listed in the letter. Be sure to include the following in your request:

- Date of request
- Name of mine
- ID number
- Inspector
- Citation(s)/Order(s) number(s)
- Date issued
- Section cited
- Action contested
- Contact information including your
 - Name
 - Title
 - Company/Organization
 - Address
 - Telephone number

NOTE: You may submit information about, and in support of, your position instead of requesting a conference. In either case, the action shall be taken no later than **10 calendar days** after the issuance of the citation/order.

The following is a sample format for a letter requesting a Safety and Health Conference.

Request for Safety and Health Conference

Date: _____

District Manager
MSHA District Office
Street Address
City, State Zip Code

Dear _____,

A conference is requested regarding the citation(s)/order(s) described below which were issued

at _____, ID No. _____
(name of mine)

by _____.
(inspector)

Citation/Order No.: _____ Date issued: _____ Section cited: _____

Action contested: _____

Sincerely,

_____	Name
_____	Title
_____	Company
_____	Street Address
_____	City, State and Zip Code
_____	Telephone Number

Note: You may submit information about, and in support of your position instead of requesting a conference. In either case, the action shall be taken **NO LATER** than **TEN CALENDAR DAYS after the issuance of the citation/order.**

Notice of Contest

You have the right to challenge the issuance, modification, or termination of any citation or order issued under Section 104 of the Act, and also the reasonableness of the time fixed for abatement. This is called a “notice of contest.” The notice should state your position on each item being challenged and the action (“relief”) you want MSHA to take, and must be done within **30 days** of when you receive your copy of the contested citation or order, modification, or termination.

You may file a copy of this notice with the Federal Mine Safety and Health Review Commission (Commission). For more information about the Commission, visit www.fmshrc.gov.

As an affected party, you have the right to participate in Commission hearings held under Section 104 of the Act that were initiated by other parties.

The mine operator must post certain documents at the mine including petitions for assessment and notices of contest. Both of these documents will tell you that there is a case open before the Commission relating to citation(s) and/or order(s) issued by MSHA. If you have filed the proper paperwork for designation as a miners’ representative, you should also receive copies of these legal documents.

Additional information regarding these rights can be found in Sections 105(a), 105(b)(1)(A), and 105(d) of the Act and in 30 CFR 100.6 and 100.7, and 29 CFR 2700.

CHAPTER 6 – IMMINENT DANGER

Section 107(b) of the Act provides you the right to be informed of, and participate in, investigations and subsequent conferences and Commission proceedings where there is an allegation of a possible imminent danger.

Section 107(b)(1) of the Mine Act addresses the circumstances when MSHA finds, during an inspection, that conditions exist in a mine which have not yet resulted in an imminent danger, and that the conditions cannot be corrected using existing technology, and reasonable assurance cannot be provided that continued mining under the conditions will not result in an imminent danger. Under such circumstances:

- Section 107(b)(1) of the Mine Act provides that MSHA shall determine the affected area and issue a notice to the operator describing the area where the condition exists.
- Section 107(b)(1) gives you the right to a copy of the notice.
- In addition, Section 107(b)(1) provides that MSHA may investigate the matter in greater detail and you may present information about the notice to MSHA during this investigation.
- Section 107(b)(2) provides that MSHA may hold a public hearing if it is requested.
- Section 107(b)(2) further provides that after the investigation and public hearing, MSHA will either cancel the notice or issue an order withdrawing the miners (except those who are working to correct the condition or causes described in the order) from the area of the mine closed by the order.

Once the miners have been withdrawn, it is illegal to reenter the area until after a public hearing has been held at which all interested persons have a chance to present their views and MSHA determines that the hazardous conditions no longer exist.

Under Section 107(c) of the Act, you have **30 days** after being notified that an imminent danger order has been issued, modified, or terminated to ask the Commission to reinstate, modify, or vacate the order.

If you file a request, the Commission's Administrative Law Judges may hold a hearing and issue a decision to vacate, terminate, affirm, or modify the order.

CHAPTER 7 – HEALTH AND SAFETY TRAINING

You need to know about MSHA's training requirements, processes, and what is needed at your mine.

PART 46 TRAINING

Miners who work in mining operations at a sand, gravel, surface clay, surface limestone, surface stone, colloidal phosphate, or shell dredging operation, surface marble, granite, sandstone, slate, shale, traprock, kaolin, cement, feldspar, or lime operation are required to have health and safety training under 30 CFR 46.

Under Part 46 you have a right to receive health and safety training if:

- You work in a mine or engage in mining operations whether you are a rank and file miner or a supervisor. **NOTE:** This includes independent contractors and employees of independent contractors who are engaged in mining operations.
- You are a construction worker who is exposed to hazards of mining operations for frequent or extended periods.

Under Part 46 you have a right to receive site specific hazard awareness training if:

- You are a worker at a mine who is not involved in mining operations. This includes scientific workers (i.e. lab technicians; delivery workers; customers (including commercial over-the-road truck drivers); vendors or visitors. This also includes maintenance or service workers who do not work at a mine site for frequent or extended periods. **NOTE:** This training is not required for any person accompanied by an experienced miner.

You may, in certain cases, be able to substitute health and safety training required by other agencies. See 30 CFR 46.4(c) for more information.

Training under 30 CFR 46 is provided by a "Competent Person."

A Competent Person:

- Is defined as a person who is designated by the production-operator or independent contractor with the ability, training, knowledge, or experience to provide training to miners in their area of expertise.
- Must be able to explain the training subject matter to you and must be able to evaluate whether the training you receive is effective.

Training Hours, Pay and Compensation

Under 30 CFR 46.10 you have the right to:

- Receive health and safety training under 30 CFR 46 during your normal working hours.
- Be paid for that time at your regular rate of pay if you are an employee of the operator.
- Be compensated for additional costs associated with your training if the training is given at a place other than your normal workplace. Examples of these costs include mileage, meals, and lodging.

You must have the proper training prior to beginning work at a mine.

As an applicant, you do not have a right to have your future employer (or the operator) pay for the newly employed or experienced miner training.

If you are laid off from work and your training expires during the lay off period, the operator is not required by the Act to pay for your training prior to your recall to work.

Withdrawal From the Mine for Not Having Required Health and Safety Training

You have a right to withdraw yourself from the mine for not having the required health and safety training. You must always tell your employer why you are withdrawing from the mine.

You cannot be fired, discriminated against, or suffer loss of pay if you withdraw yourself or if you are withdrawn from a mine by an MSHA inspector because you lack the required training.

You are entitled to be paid from the time you are withdrawn until you receive the required training and the MSHA inspector verifies the training.

Part 46 Training Plans

According to 30 CFR 46.3(a), the mine operator is required to "...develop and implement a written plan, approved by [MSHA] under paragraph (b) or (c) of this section that contains effective programs for training new miners and newly hired experienced miners, training miners for new tasks, annual refresher training, and site-specific hazard awareness training."

30 CFR 46.3(b) says, 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).

A Mine Identification Number (Mine ID) is a unique seven-digit identification number assigned by MSHA to a surface or underground mining operation.

A Contractor Identification Number (Contractor ID) is a unique alphanumeric (letters and numbers) identifier assigned by MSHA to a contractor upon request.

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

(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.

(4) A list of the persons and/or organizations who will provide the training and the subject areas in which each person and/or organization is competent to instruct; and

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

30 CFR 46.3(c) says that [a] “...plan that does not include the minimum information specified in paragraphs (b)(1) through (b)(5) of this section must be submitted to and approved by the Regional Manager, Educational Field Services Division, or designee, for the region in which the mine is located.”

A mine operator may also voluntarily submit a plan for review and approval by the Regional Manager.

The operator is required to inform the miners’ representative(s) and the miners when a plan is submitted to the Regional Manager for approval.

Within **two weeks** of receipt or posting of the plan, you and the miners at your mine may also request review and approval of the plan by the Regional Manager. You must notify the production-operator or independent contractor of the request.

Depending on which process for plan approval is followed, you should receive a copy of the plan from the operator at least **two weeks** before the plan is implemented, or at least **two weeks** before the plan is submitted to the Regional Manager for approval.

At mines where no miners’ representative has been designated, the operator must post a copy of the plan at the mine or give each miner a copy of the plan at least **two weeks** before the plan is implemented or submitted to the Regional Manager for approval.

Within **two weeks** following the receipt or posting of the training plan you or the miners at your mine may submit written comments on the plan to the mine operator, or to the Regional Manager, as appropriate.

The Regional Manager is required to notify the mine operator, you, or the miners at your mine, in writing "...of the approval, or status of the approval, of the training plan within **30 calendar days** of the date MSHA received the training plan for approval, or within **30 calendar days** of the date that MSHA received a request by a miner or a miners' representative that MSHA approve the plan."

After a plan is approved by the Regional Manager, the mine operator must provide you with a copy of the approved plan within **one week** after the approval.

At mines where no miners' representative has been designated, the mine operator must post a copy of the plan at the mine or provide a copy to each miner within **one week** after approval.

If you wish to appeal a decision of the Regional Manager, the appeal must be sent (in writing) within **30 calendar days** after notification of the Regional Manager's decision to:

**U.S. Department of Labor
Mine Safety and Health Administration
Director for Educational Policy and Development
1100 Wilson Blvd.
Rm. 2100
Arlington, VA 22209-3939**

The Director will issue a final decision of the Agency within **30 calendar days** after receipt of the appeal.

The mine operator is required to make available, at the mine, a copy of the current training plan for inspection by MSHA and for examination by you and the miners at your mine. If the training plan is not maintained at the mine, the mine operator must be able to provide the plan within **one business day** upon request by MSHA, you, or the miners at your mine.

The mine operator must comply with the procedures for plan approval described above whenever the plan undergoes revision.

The mine operator is required to make available at the mine a copy of each miner's training records and certificates for inspection by MSHA and for examination by you and the miners at your mine.

If training certificates are not maintained at the mine, the mine operator must be able to provide the certificates to you, the miners at your mine, and MSHA upon request.

Training Records

According to 30 CFR 46.9,

- The operator must provide you with a copy of your training certificates when you complete each training program.
- The operator is required to make a record of your training at specific intervals during new miner and newly-hired experienced miner training, after each session of annual refresher training, and at the completion of training for each new task. **NOTE:** This record is not a certification.
- Operators are required to maintain training records and certificates for inspection by MSHA and examination by you and your representative.
- You may request copies of your training records and certificates when you leave the employ of the operator. The operator is also required to maintain your training records and certificates for 60 days after your employment with the operator ends.

PART 48 TRAINING – TRAINING AND RETRAINING OF UNDERGROUND MINERS

Under 30 CFR 48 miners must have comprehensive training if they work in an underground mine in extraction and production, or work in shaft or slope construction, or are regularly exposed to mine hazards, or work in maintenance or service either employed by the operator or work for a contractor at the mine for frequent or extended periods.

This includes the operator if he/she works underground on a continuing, even if irregular, basis. Short-term specialized contract workers, such as drillers and blasters, who work in extraction or production or work in shaft or slope construction and who have received experienced miner training may, in lieu of subsequent training under that section for each new employment, receive hazard training under 30 CFR 48.11.

Under 30 CFR 48,

- You have the right to receive health and safety training if you engage in mining operations whether you are a rank and file employee or a supervisor. **NOTE:** This includes independent contractors and employees of independent contractors who are engaged in mining operations.
- You must have the proper training prior to beginning work at a mine.
- You must receive training on major changes to the mine environment that could adversely affect your health and safety if you return to work at the same mine after being away for 12 months or less.
- Training must be conducted by an MSHA-approved instructor.

Training Hours, Pay and Compensation

Under 30 CFR 48.2, 48.10, you have the right to:

- Receive health and safety training under 30 CFR 48 during your normal working hours.
- Be paid for that time at your regular rate of pay if you are an employee of the operator.
- Be compensated for additional costs associated with your training if the training is given at a place other than your normal workplace. Examples of these costs include mileage, meals, and lodging.

You must have the proper training prior to beginning work at a mine.

As an applicant, you do not have a right to have your future employer (or the operator) pay for the newly employed or experienced miner training.

If you are laid off from work and your training expires during the lay off period, the operator is not required by the Act to pay for your training prior to your recall to work.

Withdrawal from the Mine for Not Having Required Health and Safety Training

- You have a right to withdraw yourself from the mine for not having the required health and safety training. You must always tell your employer why you are withdrawing from the mine.
- You cannot be fired, discriminated against, or suffer loss of pay if you withdraw yourself or if you are withdrawn from a mine by an MSHA inspector because you lack the required training.
- You are entitled to be paid from the time you are withdrawn until you receive the required training and the MSHA inspector verifies the training.

According to 30 CFR 48.3(a), except "...as provided in paragraph (o) of this section, each operator of an underground mine shall have an MSHA-approved plan containing programs for training new miners, training experienced miners, training miners for new tasks, annual refresher training, and hazard training for miners...."

SHAFT OR SLOPE CONSTRUCTION TRAINING PLANS (30 CFR 48.3(o))

30 CFR 48.3(o) relates to shaft or slope construction. It says that, "Each operator engaged in shaft or slope construction shall have an MSHA-approved training plan, as outlined in this section, containing programs for training new miners, training experienced miners, training miners for new tasks, annual refresher training, and hazard training for miners...."

According to 30 CFR 48.3(o)(2), "In the case of a new shaft or slope construction... after June 28, 2006, the operator shall have an approved plan prior to commencing shaft or slope construction."

For more information about Part 48 underground miner training requirements, see:

- 30 CFR 48.5 for requirements for training of new miners
- 30 CFR 48.6 for requirements for experienced miner training
- 30 CFR 48.7 for requirements for training miners for new tasks
- 30 CFR 48.8 for requirements for annual refresher training of miners
- 30 CFR 48.11 for requirements for hazard training

Part 48 Training Plans

Part 48 training is conducted in accordance with an approved training plan.

The training plan is filed with the District Manager for the area where the mine is located.

30 CFR 48.3(c) requires that the mine operator "...submit to the District Manager the following information:"

- (1) The company name, mine name, and MSHA identification number of the mine.

A Mine Identification Number (Mine ID) is a unique seven-digit identification number assigned by MSHA to a surface or underground mining operation.

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

- (3) A list of MSHA-approved instructors with whom the operator proposes to make arrangements to teach the courses, and the courses each instructor is qualified to teach.

Training must be conducted by an MSHA-approved instructor.

- (4) The location where training will be given for each course.

- (5) A description of the teaching methods and the course materials which are to be used in training,

- (6) The approximate number of miners employed at the mine and the maximum number who will attend each session of training.

- (7) The predicted time or periods of time when regularly scheduled refresher training will be given. This schedule shall include the titles of courses to be taught, the total number of instruction hours for each course, and the predicted time and length of each session of training.

(8) 30 CFR 48.3(c)(8) applies to New Task Training of Miners. The operator is required to submit:

(i) A complete list of task assignments to correspond with the definition of “task” in 30 CFR 48.2(f).

A task is defined as “...a work assignment that includes duties of a job that occur on a regular basis and which require physical abilities and job knowledge.”

(ii) The titles of personnel conducting the training for this section.

(iii) The outline of training procedures used in training miners in those work assignments listed according to paragraph (c)(8)(1) of this section.

(iv) The evaluation procedures used to determine the effectiveness of training under [30 CFR 48.7].

The operator shall furnish to you a copy of the training plan **two weeks** before the plan is submitted to the District Manager.

Where a miners’ representative is not designated, a copy of the plan is to be posted on the mine bulletin board **two weeks** before [the plan] is submitted to the District Manager.

Written comments about the plan received by the mine operator from you or the miners at your mine are to be submitted to the District Manager.

You or the miners at your mine may submit comments about the training plan directly to the District Manager.

The District Manager for the area where your mine is located will notify you and the mine operator, in writing, within **60 days** from the date on which the training plan is filed, of the approval or status of the approval of the training programs.

If revisions to the plan are required for approval (or to retain approval), the revisions required are to be specified to the mine operator and to you.

You and the mine operator have the opportunity to:

- Discuss the revisions with the District Manager, or
- Propose alternate revisions or changes

The District Manager may consult with you and the mine operator to “...fix a time within which the discussion will be held or alternate revisions or changes submitted, before final approval is made.”

The District Manager may approve separate programs of the training plan and withhold approval of other programs, pending discussion of alternate revisions or changes.

The mine operator is required to notify you and the District Manager of any changes or modifications that they propose to make in the approved training plan. The operator is required to obtain from the District Manager approval of the changes or modifications.

If the District Manager disapproves a training plan or a proposed modification of a training plan or requires changes in a training plan or modification, the District Manager will notify you and the mine operator in writing, of:

- Specific changes or items of deficiency
- The action necessary to effect the changes or bring the disapproved modification into compliance
- The deadline required for completion of remedial action to effect compliance. **NOTE:** This deadline serves to suspend punitive action under Sections 104 and 110 of the Act and other related regulations until that established deadline date, except that no such suspension shall take effect in imminent danger situations.

The operator is required to post on the mine bulletin board, and provide you a copy of all MSHA revisions and decisions that concern the training plan at the mine and which are issued by the District Manager.

Except as provided under 30 CFR 48.8(c) (Annual refresher training of miners), the operator is required to begin training within **60 days** after approval of the training plan, or approved programs of the training plan.

A copy of the MSHA-approved training plan is to be available at the mine site for MSHA inspection and for examination by you and the miners at your mine. If you, the mine operator or miners at your mine decide to appeal a District Manager's decision, the appeal is to be submitted, in writing, to the Administrator for Coal Mine Safety and Health or the Administrator for Metal and Nonmetal Mine Safety and Health as appropriate within **30 days** of notification of the District Manager's decision.

Address for Appeals

Administrator for -----
MSHA
1100 Wilson Blvd.
Room 2424 (Coal)
Room 2436 (Metal and Nonmetal)
Arlington, VA 22209-3939

The Administrator may require additional information from you, the mine operator, or the miners at your mine, and the District Manager if the Administrator determines that the information is necessary.

The Administrator shall render a decision on the appeal within **30 days** after receipt of the appeal.

According to 30 CFR 48.9

The operator must provide you with a copy of your training certificate when you complete each training program.

- You have the right to look at your training records.
- Training certificates are kept on file at the mine site.
- Copies of training certificates for currently employed miners are kept on file for two years or for 60 days after a miner leaves the operator's employ.
- If you leave the operator's employ, you receive copies of your training certificates for all the health and safety training you have completed within the previous two years.

The training certificates for each miner are to be available at the mine site for inspection by MSHA and for examination by you and by State inspection agencies.

PART 48 TRAINING - TRAINING AND RETRAINING OF MINERS WORKING AT SURFACE MINES AND SURFACE AREAS OF UNDERGROUND MINES

Under 30 CFR 48 miners must have comprehensive training if they work in an underground mine in extraction and production, or work in shaft or slope construction, or are regularly exposed to mine hazards, or work in maintenance or service either employed by the operator or work for a contractor at the mine for frequent or extended periods.

This includes any operator who works underground on a continuing, even if irregular, basis. Short-term specialized contract workers, such as drillers and blasters, who work in extraction or production or work in shaft or slope construction and who have received experienced miner training under 30 CFR 48.26 may, in lieu of subsequent training under that section for each new employment, receive hazard training under 30 CFR 48.31.

Under 30 CFR 48

- You have the right to receive health and safety training if you engage in mining operations whether you are a rank and file employee or a supervisor. **NOTE:** This includes independent contractors and employees of independent contractors who are engaged in mining operations.

- You must have the proper training prior to beginning work at a mine.
- You must receive training on major changes to the mine environment that could adversely affect your health and safety if you return to work at the same mine after being away for 12 months or less.
- Training must be conducted by an MSHA-approved training instructor.

Training Hours, Pay and Compensation

Under 30 CFR 48.30 you have the right to:

- Receive health and safety training under 30 CFR 48 during your normal working hours.
- Be paid for that time at your regular rate of pay if you are an employee of the operator.
- Be compensated for additional costs associated with your training if the training is given at a place other than your normal workplace. Examples of these costs include mileage, meals, and lodging.

You must have the proper training prior to beginning work at a mine.

As an applicant, you do not have a right to have your future employer (or the operator) pay for the newly employed or experienced miner training.

If you are laid off from work and your training expires during the lay off period, the operator is not required by the Act to pay for your training prior to your recall to work.

Withdrawal from the Mine for Not Having Required Health and Safety Training

- You have a right to withdraw yourself from the mine for not having the required health and safety training. You must always tell your employer why you are withdrawing from the mine.
- You cannot be fired, discriminated against, or suffer loss of pay if you withdraw yourself or if you are withdrawn from a mine by an MSHA inspector because you lack the required training.
- You are entitled to be paid from the time you are withdrawn until you receive the required training and the MSHA inspector verifies the training.

Part 48 Training Plans

30 CFR 48.21 says that:

“The provisions of this subpart B set forth the mandatory requirements for submitting and obtaining approval of programs for training and retraining miners working at surface mines and surface areas of an underground mine.”

According to 30 CFR 48.23(a), except "...as provided in paragraph (o) of this section, each operator of an underground mine shall have an MSHA-approved plan containing programs for training new miners, training experienced miners, training miners for new tasks, annual refresher training, and hazard training for miners...."

**SHAFT OR SLOPE CONSTRUCTION
TRAINING PLANS (30 CFR 48.23(o))**

30 CFR 48.23(o) relates to shaft or slope construction. It says that, "Each operator engaged in shaft or slope construction shall have an MSHA-approved training plan, as outlined in this section, containing programs for training new miners, training experienced miners, training miners for new tasks, annual refresher training, and hazard training for miners...."

According to 30 CFR 48.3(o)(2), "In the case of a new shaft or slope construction...after June 28, 2006, the operator shall have an approved plan prior to commencing shaft or slope construction."

For more information about Part 48 surface and surface at underground miner training requirements, see:

- 30 CFR 48.25 for requirements for training of new miners
- 30 CFR 48.26 for requirements for experienced miner training
- 30 CFR 48.27 for requirements for training miners for new tasks
- 30 CFR 48.28 for requirements for annual refresher training of miners
- 30 CFR 48.11 for requirements for hazard training

Part 48 training is conducted in accordance with an approved training plan.

The training plan is filed with the District Manager for the area where the mine is located.

30 CFR 48.23(c) requires that the mine operator "...submit to the District Manager the following information:"

- (1) The company name, mine name, and MSHA identification number of the mine.

A Mine Identification Number (Mine ID) is a unique seven-digit identification number assigned by MSHA to a surface or underground mining operation.

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

(3) A list of MSHA-approved instructors with whom the operator proposes to make arrangements to teach the courses, and the courses each instructor is qualified to teach.

Training must be conducted by an MSHA-approved instructor.

(4) The location where training will be given for each course.

(5) A description of the teaching methods and the course materials which are to be used in training,

(6) The approximate number of miners employed at the mine and the maximum number who will attend each session of training.

(7) The predicted time or periods of time when regularly scheduled refresher training will be given. This schedule shall include the titles of courses to be taught, the total number of instruction hours for each course, and the predicted time and length of each session of training.

(8) 30 CFR 48.23(c)(8) applies to New Task Training of Miners. The operator is required to submit:

(i) A complete list of task assignments to correspond with the definition of “task” in 30 CFR 48.22(f).

A task is defined as “...a work assignment that includes duties of a job that occur on a regular basis and which require physical abilities and job knowledge.”

(ii) The titles of personnel conducting the training for this section.

(iii) The outline of training procedures used in training miners in those work assignments listed according to 30 CFR 48.23(c)(8)(1) of this section.

(iv) The evaluation procedures used to determine the effectiveness of training under [30 CFR 48.27].

The operator shall furnish to you a copy of the training plan **two weeks** before the plan is submitted to the District Manager.

Where a miners’ representative is not designated, a copy of the plan is to be posted on the mine bulletin board **two weeks** before [the plan] is submitted to the District Manager.

Written comments about the plan received by the mine operator from you or the miners at your mine are to be submitted to the District Manager.

You or the miners at your mine may submit comments about the training plan directly to the District Manager.

The District Manager for the area where your mine is located will notify you and the mine operator, in writing, within **60 days** from the date on which the training plan is filed, of the approval or status of the approval of the training programs.

You and the mine operator have the opportunity to:

- Discuss the revisions with the District Manager, or
- Propose alternate revisions or changes

The District Manager may consult with you and the mine operator to "...fix a time within which the discussion will be held or alternate revisions or changes submitted, before final approval is made."

The District Manager may approve separate programs of the training plan and withhold approval of other programs, pending discussion of alternate revisions or changes.

The mine operator is required to notify you and the District Manager of any changes or modifications that they propose to make in the approved training plan. The operator is required to obtain from the District Manager approval of the changes or modifications.

If the District Manager disapproves a training plan or a proposed modification of a training plan or requires changes in a training plan or modification, the District Manager will notify you and the mine operator in writing, of:

- Specific changes or items of deficiency
- The action necessary to effect the changes or bring the disapproved modification into compliance
- The deadline required for completion of remedial action to effect compliance. **NOTE:** This deadline serves to suspend punitive action under Sections 104 and 110 of the Act and other related regulations until that established deadline date, except that no such suspension shall take effect in imminent danger situations.

The operator is required to post on the mine bulletin board, and provide you a copy of all MSHA revisions and decisions that concern the training plan at the mine and which are issued by the District Manager.

Except as provided under 30 CFR 48.8(c) (Annual refresher training of miners), the operator is required to begin training within **60 days** after approval of the training plan, or approved programs of the training plan.

A copy of the MSHA-approved training plan is to be available at the mine site for MSHA inspection and for examination by you and the miners at your mine.

If you, the mine operator or miners at your mine decide to appeal a District Manager's decision, the appeal is to be submitted, in writing to the Administrator for Coal Mine Safety and Health or the Administrator for Metal and Nonmetal Mine Safety and Health as appropriate within **30 days** of notification of the District Manager's decision.

Address for Appeals

Administrator for -----
MSHA
1100 Wilson Blvd.
Room 2424 (Coal)
Room 2436 (Metal and Nonmetal)
Arlington, VA 22209-3939

The Administrator may require additional information from you, the mine operator, or the miners at your mine, and the District Manager if the Administrator determines that the information is necessary.

The Administrator shall render a decision on the appeal within **30 days** after receipt of the appeal.

Training Records

According to 30 CFR 48.29, the operator must provide you with a copy of your training certificate when you complete each training program.

- You have the right to look at your training records.
- Training certificates are kept on file at the mine site.
- Copies of training certificates for currently employed miners are kept on file for two years or for 60 days after a miner leaves the operator's employ.
- If you leave the operator's employ, you receive copies of your training certificates for all the health and safety training you have completed within the previous two years.

The training certificates for each miner are to be available at the mine site for inspection by MSHA and for examination by you and by State inspection agencies.

CHAPTER 8 – NEW AND REVISED STANDARDS OR REGULATIONS

Section 101(e) of the Act requires MSHA to publish all proposed health or safety standards or regulations in the Federal Register and send copies of them to the miners' representative and the mine operator. The operator is required to post copies of MSHA-proposed standards and regulations on the mine's bulletin board.

As a miners' representative you may comment on, or object to, a proposed standard or regulation. The Federal Register provides contact information and all appropriate dates for submission of comments on proposed standards or regulations. You may also notify the MSHA contact person listed in the proposed standard or regulation to request a hearing to state your views.

Under Section 101(d) of the Act, you have the right to file a petition to challenge a new standard within **60 days** after the standard is published in final form in the Federal Register if you believe the miners you represent are adversely affected by it.

These petitions may be filed with the U.S. Circuit Court of Appeals for the District of Columbia or for the circuit where you live. The court will not, except "for good cause," consider the objection to the standard unless the objection was mentioned to MSHA during the proposal period.

CHAPTER 9 – PETITIONS FOR MODIFICATION OF A SAFETY STANDARD OR REGULATION

Understanding the Petitions Process

Under Section 101(c) of the Act, a mine operator or a miners' representative has the right to file a petition (request) to modify the application of any mandatory safety standard to a coal or other mine on the grounds that:

- An alternative method of achieving the result of the standard exists which will guarantee no less than the same measure of protection afforded the miners by the standard; or
- The application of the standard will "result in a diminution of safety" to miners.

MSHA's regulations on Petitions for Modification are set forth in 30 CFR Part 44. Should you plan to file a Petition for Modification (Petition), 30 CFR 44.10 and 30 CFR 44.11 state the requirements and procedures for filing a petition.

In accordance with 30 CFR 44.12(a), MSHA will notify you if the Agency receives a petition from the operator or anyone else at your mine. Also, in accordance with 30 CFR 44.10, if you file the petition, you must provide a copy of the petition to the mine operator. Service shall be accomplished personally or by registered or certified mail, return receipt requested.

You can submit your comments on the proposed modification in writing or request a hearing before a Department of Labor Administrative Law Judge (ALJ) to discuss the proposed modification after MSHA has issued its decision. ALJ decisions can be appealed to the Assistant Secretary of Labor for Mine Safety and Health.

You will receive a copy of MSHA's final decision on the modification.

You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. Electronic Mail: Standards-Petitions@dol.gov
2. Fax: 1-202-693-9441
3. Regular Mail:

MSHA
Office of Standards, Regulations and Variances
1100 Wilson Boulevard
Room 2350
Arlington, VA 22209-39394

4. Hand-Delivery or Courier:

MSHA
Office of Standards, Regulations and Variances
1100 Wilson Boulevard
Room 2350
Arlington, VA 22209-3939

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery to MSHA's Headquarters Office in Arlington, VA, are required to check in at the receptionist desk on the 21st floor.

You may inspect a copy of the petition and comments during normal business hours at the address listed above.

Here are three sample formats for comment letters from miners' representatives.

**Sample - Petition for Modification Comment Letter
Where Miners' Representative Agrees With Petition**

MSHA
Office of Standards, Regulations and Variances
1100 Wilson Boulevard
Room 2350
Arlington, VA 22209- 3939

RE: Petition for Modification _____, Mining Company, LLC
Mine No. 1, I.D. No. ____ - _____
30 CFR § 75.XXX-(b) - Docket No. X-XXXX-XXX-X

I have reviewed the above-referenced petition for modification for the XXXXX Mining Company, Mine No. 1. I agree that the proposed alternative method will guarantee no less than the same measure of protection afforded to the miners by the standard and the proposed modification should be granted.

(You may include information supporting your position here)

You may contact me if you require additional information or have questions regarding these comments.

Sincerely,
(Your signature here)
Representative of Miners

**Sample - Petition for Modification Comment Letter
Where Miners' Representative Conditionally Agrees With Petition**

MSHA
Office of Standards, Regulations and Variances
1100 Wilson Boulevard
Room 2350
Arlington, VA 22209- 3939

RE: Petition for Modification _____, Mining Company, LLC
Mine No. 1, I.D. No. ____ - _____
30 CFR § 75.XXX-(b) - Docket No. X-XXXX-XXX-X

I have reviewed the above-captioned petition for modification for the _____ Mining Company, LLC, Mine No. 1. I agree that the proposed alternative method could provide no less than the same measure of protection afforded by the standard and the modification could be granted, if, and only if, the following conditions are met:

1. All miners working in the affected areas are trained in the safe and proper use of the _____.
2. Ventilation in the affected areas of the mine must be maintained at a minimum of _____ cfm.
3. Thorough examinations of the affected areas of the mine are made on a weekly basis and the findings recorded in the book maintained for that purpose. The record book will be made available to all interested parties.
- 4. (These are examples only. Use your knowledge of the mine's conditions, etc. to write comments supporting your recommendation.)**

You may contact me if you require additional information or have questions regarding these comments.

Sincerely,
(Your signature here)
Representative of Miners

**Sample - Petition for Modification Comment Letter
Where Miners' Representative Disagrees With Petition**

MSHA
Office of Standards, Regulations and Variances
1100 Wilson Boulevard
Room 2350
Arlington, VA 22209- 3939

RE: Petition for Modification _____, Mining Company, LLC
Mine No. 1, I.D. No. ____-_____
30 CFR § 75.____-(b) - Docket No. X-XXXX-XXX-X

I have reviewed the above-referenced petition for modification for the XXXXX Mining Company, Mine No. 1. The proposed alternative method will not guarantee the same measure of protection afforded to the miners by the standard at the XXXXX Mining Company LLC, Mine No. 1. Therefore this modification should not be granted.

In support of my position, I submit the following:

- **The Mine No. 1 has experienced numerous unintentional roof falls over the last 4 year period, including 27 in 2012.**
- **The Mine No. 1 was cited 9 times for violations of 30 CFR§ 75.XXX in 2012.**
- **(These are examples only. Use your knowledge of the mine's conditions, etc. to write comments supporting your recommendation.)**

You may contact me if you require additional information or have questions regarding these comments.

Sincerely,
(Your signature here)
Representative of Miners

Filing a Petition for Modification Under Section 101(c) of the Act.

Parties to this process include:

- MSHA
- The operator of the mine
- Any representative of the miners in the affected mine
- Any other person claiming right of participation as an interested party in this proceeding may become a party upon application to the Assistant Secretary and the granting of the application.

The Petition should contain the following information:

- Your name and address
- Proof of your designation as a miners' representative
- The mailing address and mine identification number of the mine or mines affected.
- The mandatory safety standard to which the petition is directed.
- A brief statement of the modification requested,
 - ♦ whether you propose to establish an alternate method in place of the mandatory safety standard
 - ♦ whether you are alleging that the application of the standard will result in diminution of safety to the miners affected
 - ♦ whether you request relief based on both grounds.
- You should include a detailed statement of the facts to establish the grounds upon which you claim the modification is justified.

The Petition should **not** include a request for modification of the application of more than one mandatory safety standard or relief for more than one operator.

An operator may file a petition for modification pertaining to more than one mine where the operator can show that identical issues of law and fact exist as to the petition for each mine.

Public Notice of Petition

Within **15 days** from the filing of a Petition, MSHA will notify you and each known representative of miners or the operator of the affected mine, as appropriate, and will publish a notice of the petition in the Federal Register.

The Federal Register notice will contain a statement that the petition has been filed, identify the person(s) and the mine or mines to which the petition relates, cite the mandatory safety standard that the modification is sought, and describe the requested relief.

All notices will advise the interested parties that within **30 days** from the date of publication in the Federal Register, they may, in writing, comment on or provide information regarding the proposed modification.

Within **60 days** after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR 48 training plan to the District Manager.

The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Proposed Decision

Under 30 CFR 44.13(a), when MSHA receives the petition, the Administrator for Coal or Metal and Nonmetal Mine Safety and Health will initiate an investigation. Any party may request that the investigation of the petition be expedited, or that the time period for investigating the petition be extended. The requests may be granted at the discretion of the appropriate Administrator, once good cause is shown.

In paragraph (b), when the investigation is completed, the appropriate Administrator will issue a proposed decision and order. The proposed decision and order will be provided to all parties involved in the proceeding. The proposed decision and order will become final on the **30th day** after service, unless a request for hearing has been filed with the appropriate Administrator in accordance with 30 CFR 44.14.

NOTE: Service of the proposed decision is complete when the decision has been mailed to all interested parties.

Requesting a Hearing About the Proposed Decision

Under 30 CFR 44.13, you have the right to request a hearing about the proposed decision. In accordance with 30 CFR 44.13, the request must be filed within **30 days** after service of the proposed decision.

According to 30 CFR 44.14 the hearing request shall include:

- A brief summary of your position on the issues of fact or law that you would like to be raised, including specific objections to the proposed decision.

Under 30 CFR 44.14(a), a party other than you who has requested a hearing shall also comment on all issues of fact or law presented in the petition.

You should indicate a desired hearing site. See 30 CFR 44.14(b) for additional information.

If the Administrator has issued a proposed decision and order granting the requested modification, a request for hearing on the proposed decision and order may be made by any party based upon objection to one or more of the terms and conditions of the Administrator's proposed decision and order.

Partial Appeal

30 CFR 44.14(c) provides for a partial appeal.

30 CFR 44.14(c)(1) states that:

"If the Administrator has issued a proposed decision and order granting the requested modification, a request for hearing on the proposed decision and order may be made by any party based upon objection to one or more of the terms and conditions of the Administrator's proposed decision and order. If such a request for hearing is made, the request should specify which of the terms and conditions should be the subject of the hearing."

30 CFR 44.14(c)(2) says that:

"During the pendency of the partial appeal, the proposed decision and order of the Administrator will become final on the **30th day** after service, unless a request for hearing on the proposed decision and order is filed by any interested party."

In addition, it states that:

"The decision and order will remain in effect as proposed by the Administrator until the terms and conditions for which the hearing was requested are modified, affirmed, or set aside by a final order of the presiding administrative law judge or the Assistant Secretary [for Mine Safety and Health]."

Referral to the Department of Labor Chief Administrative Law Judge

Upon receipt of a hearing request as provided in 30 CFR 44.14 the Administrator shall within **5 days** refer to the Department of Labor Chief Administrative Law Judge:

- The original petition
- The proposed decision and order
- All information on which the proposed decision was based
- Any written request for a hearing on the petition filed
- Any other written comments or information received and considered in making the proposed decision

The MSHA investigation report shall be made part of the record on the petition.

The Chief Administrative Law Judge reviews whether

“(i) The terms and conditions for which the hearing was requested are necessary to ensure that an alternate method of achieving the result of the standard will at all times guarantee to the miners at the mine at least the same measure of protection afforded to the miners at the mine by such standard; or

“(ii) In the case of a petition involving a finding by the Administrator of a diminution of safety to the miners caused by application of the standard at the mine, whether the terms and conditions for which the hearing was requested are necessary to provide the equivalent protection to the miners at the mine from the hazard against which the standard is directed.”

Application for Temporary Relief; Relief to Give Effect to the Proposed Decision and Order

In accordance with 30 CFR 44.16(a), you may file an application for temporary relief from enforcement of a mandatory standard at any time before a proposed decision and order is issued on a petition for modification. Under paragraph (b), the application must be filed with and decided by the appropriate Administrator.

30 CFR 44.16(c) provides that the Administrator will investigate the merits of your application for temporary relief as soon thereafter as possible and shall issue a decision within **60 days** from filing of the application.

If the Administrator does not issue a decision within **60 days** of filing of the application, the application shall be considered denied.

Your application for temporary relief must comply with applicable general requirements of 30 CFR 44. It must state the specific relief you request, and include specific evidence showing that the following criteria in 30 CFR 44.16(e) have been met.

- The application was filed in good faith.
- The requested relief will not adversely affect the health or safety of miners in the affected mine.
- An identifiable hazard to miners exists in the mine which is caused by application of the standard at the mine.
- Other means will be used to reasonably address the hazard against which the original standard was designed to protect, and
- Compliance with the standard while the petition for modification is pending will expose miners to the identifiable hazard upon which the application is based.

30 CFR 44.16(f) states: “All parties to the proceeding where an application for temporary relief has been filed will have **15 days** from receipt of the application to file a written response with the Administrator.”

According to 30 CFR 44.16(h), "Temporary relief may be granted by the Administrator upon a finding that application of the standard at the mine will result in a diminution of safety to the miners at such mine."

30 CFR 44.16(i) involves an appeal to the Office of Administrative Law Judges. It says that, "If the application for temporary relief is granted by the Administrator, any other party may request a hearing within **15 days** of the Administrator's decision."

It also states that the request shall be addressed to the Administrator and shall be referred by the Administrator, along with the petition for modification, to the Chief Administrative Law Judge in accordance with 30 CFR 44.15. It further states that "After referral of the petition and application for temporary relief, no further decision shall be rendered by the Administrator."

30 CFR 44.16(j) provides that if the Judge issues an order granting temporary relief, it will be effective until it is superseded by the Administrator's proposed decision and order, or a hearing is requested.

In addition, paragraph (j) states that:

"If a hearing is requested, the temporary relief shall remain in effect until modified, affirmed or set aside by the presiding Administrative Law Judge."

and

"In no case, however, will the Administrator's order remain in effect for more than one year, unless renewed or affirmed by the presiding Administrative Law Judge."

30 CR 44.16(k) provides that at any time following the proposed decision and order of the Administrator on the Petition, **any party** may request relief to give effect to the proposed decision and order until it becomes final.

CHAPTER 10 – COMMISSION REVIEW OF ADMINISTRATIVE LAW JUDGE (ALJ) DECISIONS

The Commission Administrative Law Judges (ALJs) are employed by the Commission. They are not employed by MSHA or the U.S. Department of Labor.

A miner or miners' representative has the right to ask the Commission to review an ALJ decision that adversely affects the miner. Requests for review must be filed (in the form of a petition) with the Commission within **30 days** after the ALJ's decision was issued.

The Commission will decide whether or not to review the decision. If the Commission decides not to conduct a review, the ALJ's decision becomes final **40 days** after it is issued.

CHAPTER 11 – JUDICIAL REVIEW OF COMMISSION DECISIONS

Under Section 106(a) of the Act a miner or miners' representative has the right to ask for a judicial review of a Commission decision where the miner was a party to, and was adversely affected by, the decision.

To request a review, the miner or miners' representative must file a written petition for review within **30 days** after the Commission's decision, requesting that the decision be modified or set aside. The review takes place either in the U.S. Circuit Court of Appeals for the District of Columbia or the circuit where the violation of the act is alleged to have occurred.

CHAPTER 12 – HEALTH PROTECTION

Toxic Substances and Hazardous Physical Agents and Equipment Studies

Under Section 501(a)(11) of the Act, you may submit a request, in writing, to MSHA or the Department of Health and Human Services (DHHS) to conduct studies, research, experiments, and demonstrations to determine if any substance normally found in the mine has potentially toxic effects in its usual concentration, or if any physical agents or equipment found or used at the mine has potentially hazardous effects, MSHA or DHHS will share the results of any of these activities with the miners and the operator as soon as possible.

NIOSH Health Hazard Evaluations

NIOSH (National Institute for Occupational Safety and Health) collects information, performs research, and provides products and services to help prevent work-related illnesses, injuries, diseases, and fatalities.

As part of their work NIOSH conducts Health Hazard Evaluations (HHE) at worksites.

According to 42 CFR 85.2, Health hazard evaluation means the investigation and the determination of potentially toxic or hazardous effects of: (a) Any substance normally used or found in any place of employment to which the OSH Act is applicable, or (b) any substance or physical agent normally used or found in any place of employment to which the FMSH Act [Mine Act] is applicable.

The following can request an HHE at their worksite:

- Employees, their representatives, or any management official of a Federal, state, or local government agency.
- Current employees (and two coworkers) for a total of three signatures on a request.
- One employee (in a workplace with three or fewer employees).
- Employers
- Union representatives

A Health Hazard Evaluation is a comprehensive review of health conditions which may involve one (or more) investigative visits to a worksite. Sometimes site visits are not needed.

Health Hazard Evaluations are conducted at no cost to the employer or employees.

NIOSH investigators may, during a site visit

- Collect air and surface samples
- Interview employees
- Conduct medical tests or physical examinations of employees
- Review illness and injury reports

NIOSH regulations at 42 CFR 85.3 give the procedures for requesting an HHE.

42 CFR 85.3(b) provides that:

Requests for health hazard evaluations are required to be in writing and signed by:

- The employer in whose place of employment the substance or physical agent is normally found, or
- An authorized representative of employees in the place of employment where the substance or physical agent is normally found.

As stated in 42 CFR 85.3-1, each request for an HHE is to contain:

- The requestor's name, address, and telephone number (if any).
- The name and address of the place of employment where the substance or physical agent is normally found.
- The specific process or type of work which is the source of the substance or physical agent, or in which the substance or physical agent is used.
- Details of the conditions or circumstances which prompted the request.
- A statement, if the requestor is not the employer, that the requestor is:
 - ♦ An authorized representative or an officer of the organization representing the employees for purposes of collective bargaining, or
 - ♦ An employee of the employer and is authorized by two or more employees employed in the same place of employment to represent them for purposes of these acts (each such authorization shall be in writing and a copy submitted with the request for HHE), or
 - ♦ One of three or less employees employed in the place of employment where the substance or physical agent is normally found.
- A statement indicating whether or not the name(s) of the requestor or those persons who have authorized the requestor to represent them may be revealed to the employer by NIOSH.

- The following supplementary information if known to the requestor:
 - ♦ Identity of each substance or physical agent involved
 - ♦ The trade name, chemical name, and manufacturer of each substance involved
 - ♦ Whether the substance or container or the source of the physical agent has a warning label, and
 - ♦ The physical form of the substance or physical agent, number of people exposed, length of exposure (hours per day) and occupations of exposed employees.

A sample HHE request form is on the following pages.

Request for a Health Hazard Evaluation

Form Approved OMB No. 0920-0260

This form also is available at <http://www.cdc.gov/niosh/hhe/hheform.html>

Exp. 11/30/2014

Workplace Name _____

Workplace Address _____

Street

City

State

Zip Code

What type of work is done **at this location**? _____

How many people work **at this location**?

☐ 3 or less

☐ 4-9

☐ 10-49

☐ 50-99

☐ 100-249

☐ 250 or more

Who is responsible for employee health and safety in this workplace?

Name _____ Title _____ Phone Number _____

What hazardous substances, agents, or work conditions are of concern? If known, please include chemical names, trade names, manufacturer name, or other identifying information.

How are employees exposed?

☐ Breathing

☐ Skin Contact

☐ Swallowing

☐ Other (Explain _____)

In what work area, such as a building or department, is the hazard? _____

How many people work in this area?

☐ 3 or less

☐ 4-9

☐ 10-49

☐ 50-99

☐ 100-249

☐ 250 or more

Describe the work people do in this area. _____

What health concerns do people in this work area have? _____

Information About You

Name (please print): _____

Your signature: _____

Address where we can send you information? _____

Street	City	State	Zip Code
--------	------	-------	----------

Phone number where you would like to be called: (____) _____

Best time to call: _____ a.m. or p.m.

Email address where you would like to be contacted: _____

Can NIOSH reveal your name to your employer? ☐ No ☐ Yes

Please check one:

☐ I am a current employee and 3 or fewer employees are exposed to the hazard.

☐ I am a current employee and more than 3 employees are exposed to the hazard.

*If you check this box, two other employees need to sign this form and provide their contact information.

Second Employee

Name (Please print): _____

Signature: _____

Address where we can send you information? _____

Street	City	State	Zip Code
--------	------	-------	----------

Phone number where you would like to be called: (____) _____

Best time to call: _____ a.m. or p.m.

Email address where you would like to be contacted: _____

Can NIOSH reveal your name to your employer? ☐ No ☐ Yes

Third Employee

Name (Please print): _____

Signature: _____

Address where we can send you information? _____

Street	City	State	Zip Code
--------	------	-------	----------

Phone number where you would like to be called: (____) _____

Best time to call: _____ a.m. or p.m.

Email address where you would like to be contacted: _____

Can NIOSH reveal your name to your employer? ☐ No ☐ Yes

Complete this section if you are a union representative

Name of union: _____

Address: _____
Street City State Zip Code

What is your position in the union? _____

Complete this section if you are an employer representative

Name: _____

What is your position in the company, agency, or organization? _____

For Everyone

Has another government agency evaluated this workplace? ☐ No ☐ Yes ☐ Do not know
If yes:

What agency? _____

What year was the evaluation done? _____

☐ Check here if this evaluation is underway now

Is a request for the hazard being filed with another agency? ☐ No ☐ Yes ☐ Do not know
If yes:

What agency? _____

How did you learn about the NIOSH Health Hazard Evaluation Program?

☐ NIOSH website ☐ Facebook ☐ Other website (Explain _____)

☐ CDC 1-800 number ☐ Union ☐ Coworkers ☐ Company official

☐ Trade/industry/union magazine or newsletter ☐ Other (Explain _____)

If you have questions about this form, call us at (513) 841-4382 or send us an email at
HHERequestHelp@cdc.gov

To submit this form by fax, send it to (513) 841-4488.

To submit this form by mail, send it to:

National Institute for Occupational Safety and Health
4676 Columbia Parkway, MS R-9
Cincinnati, Ohio 45226

Thank you for submitting this form. You will get a response from us within 10 days.

42 CFR 85.4 says, "Upon receipt of a request for a health hazard evaluation, NIOSH will determine whether or not there is reasonable cause to justify conducting an investigation.

If NIOSH determines that an investigation is justified, a NIOSH officer will inspect the place of employment, collect samples where appropriate, and perform tests necessary to the conduct of a health hazard evaluation, including medical examinations of employees.

If NIOSH determines that an investigation is not justified, the responder will be notified in writing of the decision."

There are seven legal rights of NIOSH and employees or employee representatives that NIOSH considers non-negotiable.

1. NIOSH and its representatives have the right to enter the workplace to conduct investigations.
2. NIOSH and its representatives have the right to access information and records maintained by the employer that are pertinent to the HHE investigation.
3. NIOSH and its employees (including management employees) have the right to private and confidential interviews.
4. Employee representatives, including an employee requestor and a representative of any union representing the affected employees, have the right to accompany NIOSH investigators during the initial inspection of any workplace to be evaluated. (NIOSH investigators may have additional employee representatives accompany them if necessary to aid in the investigation.)
5. Employee representatives have the right to participate in an opening and closing conference with NIOSH investigators at the start and conclusion of a NIOSH investigation at the workplace.
6. Employees have the right to wear NIOSH sampling devices and participate in medical tests when offered or requested by NIOSH. (This also applies to management employees.)
7. Employees have the right to read or obtain copies of all HHE interim and final reports. (The employer is required to post the final report in the workplace for 30 days, or supply a list of names and addresses of affected employees so that NIOSH can mail the report directly to them.)

Here is some additional information about accompaniment of NIOSH officers while conducting an HHE.

42 CFR 85.9 says: "The NIOSH officer may permit additional employer representatives and such additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the investigation.

However, if in the judgment of the NIOSH officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer is reasonably necessary to the conduct of an effective and thorough investigation of the workplace, such third party may accompany the NIOSH officer during the inspection.

A different employer or employee representative may accompany the officer during each different phase of the inspection if this will not interfere with the conduct of the investigation.”

According to 42 CFR 85.9(b), “NIOSH officers are authorized to resolve all disputes as to who is the representative authorized by the employer and employees for purposes of this section.

If there is no authorized representative of employees, or if the NIOSH officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters directly related to the health hazard evaluation.”

IMPORTANT

“If desired and noted on the HHE request form, NIOSH will not reveal to the employer the names of the persons who made the request. Personal information from records, questionnaires, interviews with NIOSH investigators, and individual medical results will be safeguarded in accordance with provisions of the Privacy Act.

The Occupational Safety and Health Act and the Federal Mine Safety and Health Act forbid employers from retaliating or punishing employees for making HHE requests or cooperating with NIOSH investigators (see Section 11(c) of the Occupational Safety and Health Act or Section 105(c) of the Mine Safety and Health Act). The enforcement of these anti-discrimination provisions is the responsibility of the U.S. Department of Labor. If discrimination is suspected, contact the nearest OSHA or MSHA office immediately.”

Reporting HHE Findings

NIOSH reports its findings and recommendations to employers, employees, and employee representatives. Verbal reports are normally provided to employer and employee representatives during a closing conference at the conclusion of a site visit, and by telephone. Often, results are only preliminary or incomplete at that time. Written interim reports are sometimes provided while an investigation is still in progress.

When all the information and data have been analyzed, NIOSH issues a report of its final determination, giving findings and recommendations. Copies of this report are sent to the requestor, the employer, employee representatives, OSHA, and other appropriate agencies.

The employer is required to post the final report in a place accessible to employees from all areas evaluated (alternatively, the employer may give NIOSH names and addresses of affected employees to permit NIOSH to mail the report to each affected employee.)

Although NIOSH has no authority to force the employer to adopt its recommendations, experience has shown that most employers attempt to address any problems identified in the HHE report.

For additional information about the Health Hazard Evaluation program contact NIOSH at <http://www.cdc.gov/niosh/hhe/request.html>

Protection Against Black Lung Discrimination (Underground Coal)

A miner cannot be fired or discriminated against if they are partly disabled from black lung and keep working. If a miner is fired or discriminated against because of their condition, the miner or their representative may apply to MSHA or the Department of Labor's Employment Standards Administration within **60 days** for a review of their situation. Be sure to send a copy of the application to the person alleged to have committed the act of discrimination.

Exposure to Diesel Particulate Matter (DPM) (Underground Metal and Nonmetal)

According to 30 CFR 57.5070(a)(1)-(4), Mine "...operators must provide annual training to all miners at a mine covered by this part who can reasonably be expected to be exposed to diesel emissions on that property." This training must cover health risks "...associated with exposure to diesel particulate matter," control methods, "...identification of the personnel responsible for maintaining those controls," and actions "...miners must take to ensure the controls operate as intended."

Under 30 CFR 57.5071(a), an operator must "monitor as often as necessary to effectively determine...whether the average personal full-shift airborne exposure to DPM exceeds the DPM limit specified in § 57.5060 ("a full shift airborne concentration of 160 micrograms of elemental carbon per cubic meter of air"). In addition, under paragraph (b), if a miner is affected by the monitoring, the operator must notify you and the affected miners before the monitoring takes place, and both the miner and you may observe the monitoring."

30 CFR 5071(c) says, if a miner has been overexposed to DPM, the operator must promptly post a notice on the mine bulletin board of the corrective action being taken. Paragraph (c) also requires the operator initiate corrective action by the next work shift, and promptly complete the corrective action.

Under 30 CFR 57.5071(d), "the operator must post on the mine bulletin board within **15 days** of receipt. These results "must remain posted for **30 days.**" You are entitled to copies of the sampling results.

CHAPTER 13 – RIGHTS TO INFORMATION

Under Sections 103(c) and (h) of the Act you have the right to receive copies of most records, information, reports, findings, citations, notices, and orders that the Act calls for from the Secretary of Labor (MSHA) or the Secretary of Health, Education, and Welfare (now Health and Human Services).

If you are a miner working at the affected mine or a former miner, the operator can provide you with copies of your records of exposure to potentially toxic materials and harmful physical agents.

You also have the right to examine records to all HazCom materials except as provided in 30 CFR 47.81–47.87 (provisions for withholding trade secrets).

The operator is responsible for providing you the first copy and each revision of HazCom material free-of-charge. Fees for additional copies are to be non-discriminatory and reasonable.

Upon request, the operator must disclose the identity of a trade secret chemical in a non-emergency situation to you, all miners at your mine who are exposed, or to a health professional. This request must be in writing. If a request is denied, the denial has to be in writing and a copy of the denial is to be provided to you, exposed miners at your mine, or to the health professional within **30 days** of the request.

Under 30 CFR 47.87(a), “The health professional, miner or designated representative may refer the written denial to MSHA for review.” See 30 CFR 47.87 (a)-(d) for additional information.

If you are a miners’ representative designated under 30 CFR 40, you have the right to access all training certificates prepared under 30 CFR 62.180(b) and to any notice of exposure determination under 30 CFR 62.110(d). The operator must provide the first record at no cost to you, and additional copies at a reasonable cost.

Monitoring and Recording of Exposure to Toxic Materials or Harmful Physical Agents

Under Section 103(c) of the Act you may watch the operator’s monitoring or measuring of employee exposure to potentially toxic materials or harmful physical agents.

Miners, former miners, and miners’ representatives have the right to access records of exposure to toxic materials or harmful physical agents. In case of overexposure, the operator must inform you about it and what is being done to correct the situation.

Hazard Communication Records

In accordance with 30 CFR 47.71, upon request, the operator must provide the miner or the miners' representative access to all Hazard Communication (HazCom) materials required by the HazCom standards. Exceptions are described in the trade secret provisions of 30 CFR 47.81 through 47.87.

30 CFR 47.72 says the operator is responsible for providing you the first copy and each revision of HazCom material free-of-charge. Fees for additional copies are to be non-discriminatory and reasonable.

30 CFR 47.81(b) says the operator must make the chemical's identity available to miners, designated representatives, and health professionals. 30 CFR 47.83 describes the requirements for disclosing trade secret chemicals to health professionals when a medical emergency exists and the identity of the chemical is necessary for emergency treatment. However, the operator may require a written statement of the need and confidentiality agreement.

30 CFR 47.84 describes the steps to take when requesting the identity of a trade secret chemical in a non-emergency situation to you, all miners at your mine who are exposed, or to a health professional. This request must be in writing. If a request is denied, the denial has to be in writing and a copy of the denial is to be provided to you, exposed miners at your mine, or to the health professional within **30 days** of the request.

Noise Exposure Records

If you are a miners' representative designated under 30 CFR 40, you have the right to access all training certificates prepared under 30 CFR 62.180(b) for the miners you represent.

According to 30 CFR 62.1909(a)(1) you, the miner or the miners' designee, with written consent, has a right to access all records the operator is required to maintain for the individual miner.

30 CFR 62.110(d) requires the operator to notify a miner of his or her exposure to noise that equals or exceeds the action level, or exceeds the dual hearing protection level. The operator must make the notification within **15 calendar days** and include the exposure determination and the corrective action being taken. The operator must provide the first record at no cost to you, and additional copies at a reasonable cost.

Pattern of Violations

The Mine Act places the responsibility for ensuring the health and safety of miners on mine operators.

Congress enacted the pattern of violations (POV) provision to provide MSHA with an additional enforcement tool when other tools had proven ineffective. Congress intended MSHA to use the POV provision to restore safe and healthful conditions at mines with a pattern of significant and substantial (S&S) violations.

The legislative history states that Congress believed the existence of a pattern would signal to both the mine operator and the Secretary that "...there is a need to restore the mine to effective safe and healthful conditions and that the mere abatement of violations as they are cited is insufficient."

A mine operator who has a pattern of S&S violations at a mine will receive written notice from MSHA. For each subsequent S&S violation, MSHA will issue an order withdrawing miners from the affected area until the cited condition has been corrected.

MSHA will terminate an operator's POV notice when

- An inspection of the entire mine is completed and no S&S violations are found, or
- No withdrawal order is issued by MSHA in accordance with Section 104(e)(1) of the Mine Act within **90 days** of the issuance of the pattern notice.

The POV rule provides mine operators who may be approaching POV status the opportunity to implement a Corrective Action Program (CAP)¹. MSHA may consider a mine operator's effective implementation of an MSHA-approved CAP as a mitigating circumstance in its POV review. In order to determine whether they should take action to avoid triggering a POV Notice, operators should track their violation and injury histories. Mine operators can determine whether they may be subject to a POV Notice by using MSHA's Pattern of Violations Monitoring Tool by visiting <http://www.msha.gov> and going to the POV Single Source Page. Mine operators who are at risk of meeting the screening criteria for a POV Notice are encouraged to implement a CAP to reduce S&S violations. Operators who submitted CAPs under the previous rule and wish to obtain approval of their CAP under the new rule must submit a revised CAP that is consistent with current guidance and addresses current compliance challenges to the District Manager for approval. For mine operators that implement a CAP with goals to reduce or maintain the rate of S&S violations at a mine, the POV Home Page includes an S&S Rate Calculator that operators may use to determine if a mine is meeting the goals set forth in its CAP.

Under the Pattern of Violation Process you are entitled to the following:

- A copy of a mine's Corrective Action Program (CAP)
The District Manager will consider written comments submitted by a miners' representative in the review process of a mine's CAP. Consequently, the District Manager must ensure that the operator has provided any representatives of miners a copy of the CAP when it is submitted to MSHA.

¹ More information about CAPs can be found in MSHA's [Pattern of Violations Procedures Summary](#), which contains guidelines for corrective action programs in Appendix B.

- Notification of whether MSHA approved the mine's CAP.
After a thorough review of the CAP, the District Manager should notify the operator and you, within **30 days** of CAP submission whether the proposed CAP is approved.
- A copy of the POV Notice.
The District Manager will issue the POV Notices and provide you a copy of the notification. The notification will specify the basis for identifying the mine as having a POV, and will be made available to the public on the POV Single Source page of MSHA's website.

Notice of Proposed Civil Penalty

Under Section 105(a) of the Act, you have the right to receive notices of a proposed civil penalty for a safety or health violation cited by an MSHA inspector. MSHA will provide a copy to you and the operator.

MSHA will notify the operator and send you a copy of any notice of a proposed civil penalty under Section 110(b) for failure to correct a violation within the time period permitted for its correction.

Posting Documents

Under Section 109 of the Act, MSHA will deliver to the mine office any orders, citations, or decisions required by the Act. The operator (or agent of the operator) must post immediately copies of these on a bulletin board at a place that is easily visible to all persons, protected against damage by weather and unauthorized removal. MSHA will also mail or deliver to you copies of these materials.

CHAPTER 14 – ACCIDENT INVESTIGATION

The objective of an accident investigation is to determine the root cause(s) of the mine accident and to utilize and share this information with the mining community and others for the purpose of preventing similar occurrences. MSHA's accident investigations include determinations of whether violations of the Act, the MINER Act, or 30 CFR contributed to the accident.

Types of Accidents

There are four types of accidents:

- Fatal
- Nonfatal
- Non-injury
- Unknown – An example of an “unknown” accident type is a death on mine property, the cause of which may be natural or which has yet to be determined.

Classification of Mine Accidents

The accident classification identifies the circumstances which contributed **most directly** to the accident.

The accident may or may not be directly tied to any resulting injury. For that reason, you **must not** associate the classification decision with any injury that may have resulted. The concepts of accident and injury must be kept clear and distinct in your mind as separate things.

Accident classifications include:

- Electrical – Accidents where electric current is most directly responsible for the resulting accident.
- Entrapment – In accidents involving no injuries or nonfatal injuries which are not serious, entrapment of mine workers takes precedence over roof falls, explosives accidents, inundations, etc. If a roof fall results in an entrapment accident, the accident classification is “Entrapment.”
- Exploding Vessels Under Pressure – These are accidents caused by explosion of air hoses, air tanks, hydraulic lines, hydraulic hoses, and other accidents precipitated by exploding vessels.
- Explosives and Breaking Agents – Accidents involving the detonation of manufactured explosives that can cause flying debris, concussive forces, or fumes.
- Falling, Rolling, or Sliding Rock or Material of Any Kind – Injuries caused directly by falling material – material was set in motion by machinery, haulage equipment, or hand tools, or while material is being handled or disturbed, etc. For example, where a rock

was pushed over a highwall by a dozer and the rock hit another rock which struck and injured a worker.

- Rib, Side or Highwall – Accidents in this classification include falls of material (from in-place) while barring down or placing props; also pressure bumps and bursts. Since pressure bumps and bursts which cause accidents are infrequent, they are not given a separate category. **NOTE:** Does not include accidents where motion of machinery or haulage equipment caused the fall either directly or by knocking out support; such accidents are classified as machinery or haulage, whichever is appropriate.
- Fall of Roof or Back – Underground accidents which include falls while barring down or placing props; also pressure bumps and bursts. **NOTE:** Does not include accidents in which the motion of machinery or haulage equipment caused the fall either directly or by knocking out support; such falls are classified as machinery or haulage, whichever is appropriate.
- Fire – An unplanned underground mine fire not extinguished within 10 minutes of discovery; or an unplanned mine fire in a surface mine or in the surface area of an underground mine that is not extinguished in 30 minutes. Fires of shorter duration may be responsible for reportable injuries. In those cases, the fire would still be the cause of the accident. **NOTE:** Does not include fires initiated by electricity or by explosion of gas or dust.
- Handling Material (lifting, pulling, pushing, shoveling material) – The material may be in bags or boxes, or loose sand, coal, rock, timber, etc. The accident must have been most directly caused by handling material.
- Hand Tools – Accidents related to non-powered tools when being used as hand tools. **NOTE:** Does not include electric tools or air-powered tools.
- Non-Powered Haulage – Accidents related to motion of non-powered haulage equipment. **NOTE:** Includes accidents involving wheelbarrows, manually pushed mine cars and trucks, etc.
- Powered Haulage – Haulage includes motors and rail cars, conveyors, belt feeders, longwall conveyors, bucket elevators, vertical manlifts, self-loading scrapers or pans, shuttle cars, haulage trucks, front-end loaders, load-haul-dumps, forklifts, cherry pickers, mobile cranes if traveling with a load, etc. The accident is caused by the motion of the haulage unit. **NOTE:** Includes accidents caused by an energized or moving unit or failure of component parts.
- Hoisting – Damage to hoisting equipment in a shaft or slope which endangers an individual or interferes with use of the equipment for more than 30 minutes.

Hoisting may also be the classification where a victim was injured by hoisting equipment but there was no damage to the equipment, such as accidents involving cages, skips, buckets, or elevators.

The accident results from the action, motion, or failure of the hoisting equipment or mechanism. Included is equipment such as derricks and cranes only when used in

shaft sinking; suspended work platforms in shafts; mine cars being lowered or raised by hoisting equipment on slopes or inclines; a skip squeezed between shaft structural members or rails resulting in an accident; or an ore bucket tipped for any reason causing an accident.

- Ignition or Explosion of Gas or Dust – Accidents resulting as a consequence of the ignition or explosion of gas or dust. Included are exploding gasoline vapors, space heaters, or furnaces.
 - ♦ Methane Ignition – A methane ignition occurs when methane burns without producing destructive forces. Damage resulting from an ignition is limited to that caused by flame and heat. Personnel in the immediate vicinity of an ignition may be burned and line brattice or other materials in close proximity may be discolored, melted or burned. Ignitions generally involve small quantities of methane and are usually confined to a small area; however, in the case of methane roof layering, flame spread may be more extensive.
 - ♦ Methane Explosion – A methane explosion occurs when methane is ignited and burns violently. The flame of the explosion accelerates rapidly, heating the environment and causing destructive forces. Evidence of the destructive forces may be manifest on victims, equipment, structures, etc. Witnesses to an explosion may hear the noise generated by the resulting sound pressure wave.
- Impoundment – An unstable condition at an impoundment, refuse pile, or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area. Also the failure of an impoundment, refuse pile, or culm bank.
- Inundation – An unplanned inundation of a mine by a liquid or gas. The mine may be either a surface or underground operation.
- Machinery – Accidents resulting from the action or motion of machinery or from failure of component parts. Included are all electric and air-powered tools and mining machinery such as drills, tuggers, slushers, draglines, power shovels, loading machines, compressors, etc. Include derricks and cranes *except* when they are used in shaft sinking (see Hoisting) or mobile cranes traveling with a load (see Powered Haulage).
- Slip or Fall of Person – Includes slips or falls from an elevated position or at the same level while getting on or off machinery or haulage equipment that is not moving. Also includes slips or falls while servicing or repairing equipment or machinery; includes stepping in a hole.
- Stepping or Kneeling on Object – An accident is classified in this category only where the object stepped or kneeled on contributed most directly to the accident.
- Striking or Bumping – This classification is restricted to those accidents in which an individual, while moving about, strikes or bumps an object but is not handling material, using hand tools, or operating equipment.
- Other – Accidents not elsewhere classified.

Your Rights and Responsibilities During MSHA's Accident Investigation Process

You play a vital role in representing the miners at your mine in the investigation of mine accidents. It is extremely important that you know and understand the part you play in the process and your rights and responsibilities.

MSHA's accident investigations are conducted by an experienced team of investigators and typically involve three phases:

- (1) An on-site physical examination of the accident scene and applicable records and documentation.
- (2) Interviews with witnesses who have knowledge of the conditions or practices which may have contributed to the accident.
- (3) Analysis and testing of mining equipment or material which may have been involved in the accident.

The causes of an accident are determined after a complete review and analysis of all the facts and evidence.

Any accident, as defined by 30 CFR 50.2(h)(1)-(12), is to be reported immediately, at once, without delay, and within 15 minutes to MSHA by the mine operator at MSHA's 24 hour toll-free number.

MSHA TOLL-FREE ACCIDENT REPORTING NUMBER

1-800-746-1553

MSHA will serve as the primary communicator with the operator, miners' families, the press, and the public regarding the accident investigation.

MSHA will also appoint a separate senior MSHA official who will be onsite, and/or a media specialist to serve as the primary communicator with you, the mine operator, miners' representative, media and general public during such mine accidents.

Miners' Representatives Participation During the Physical Examination of the Accident Scene

The physical examination of an accident site is conducted under MSHA control in cooperation with the state agency (where applicable) which has authority over matters of miner safety and health, the mine operator, and the miners' representative(s).

The mine operator has a right to accompany MSHA personnel during the physical examination of the accident site. MSHA will ask the mine operator to designate a representative for this purpose.

The Mine Act gives you the right to participate in enforcement-related activities of MSHA. Regarding accident investigation, these provisions are interpreted to afford you “walk around” rights during the physical examination of accident sites.

Section 103(f) of the Act grants MSHA investigators the authority to control the number of representatives participating in the physical portion of the investigation. An equal number of participants will ordinarily be allowed.

Occasionally, there may be multiple miner representatives or multiple operators (such as independent contractors) participating along with the mine operator. These multi-entities may require that the various representatives be divided into workable groups and activities scheduled.

In most instances, the miners’ representative can be easily identified. A mine that has not had a designated representative of miners prior to the accident can create unusual situations where miners at the mine request representation after the accident. In such cases, the procedure under 30 CFR 40 is used to identify the representative(s) at your mine. Miners who participate in the designation of a representative will be treated as confidential to the extent allowed by law if they request that their identity be kept confidential.

MSHA will hold an initial meeting with all interested parties (mine operator, State and miners’ representatives) to discuss how the investigation will proceed and to advise everyone of the hazards of coming in contact with body parts (e.g. skin, limbs, hair, etc.), body fluids (e.g. blood, urine, feces, etc.), or other biological or health hazards.

If appropriate, the Accident Investigation Team Leader may contact the MSHA’s Division of Health (Coal or Metal and Nonmetal) for precautionary health or biological procedures to be followed while in the accident area.

It is important, during the physical examination of the accident scene, that no one disturbs any part of the accident scene or removes any items from the accident scene without prior MSHA permission. If permission is granted, an MSHA representative must be present to identify and determine exactly what is removed.

Participation During the Interviewing of Witnesses

Interviewing witnesses is an essential part of accident investigations. Because recollections can become confused and physical conditions at the accident site can change over time, all persons with information relevant to the accident are interviewed as soon as reasonably possible. Any suggestions for potential interviewees offered by you or the mine operator will be considered.

Witness interviews are voluntary. A witness may refuse to answer any question or may terminate the interview at any time.

Confidential Interviews

Any witness can request a confidential interview.

A confidential interview is one where no other parties are present except MSHA, the witness, and their representative. MSHA will withhold from public disclosure, to the extent allowed by law, statements made in a confidential interview.

Non-Confidential Interviews

Normally, MSHA *and* the state agency (if any) will jointly conduct non-confidential interviews. Where appropriate, MSHA and state investigators may cooperate in developing questions prior to the interviews.

You and the mine operator may be invited to participate in non-confidential interviews except when government-only interviews are deemed appropriate, for example, to protect a witness from intimidation. Each party will generally be allowed one representative to attend the interviews. In special cases where technical assistance is needed, MSHA may allow a greater number of representatives to attend. The number of persons in attendance will be limited to the minimum needed to conduct an effective interview.

During the interview you will be permitted to ask questions to follow up on questions by MSHA and the state agency, to expand upon information, or to clarify points made by the witness. If you believe that new areas of questioning should be explored, you must submit the proposed questions to MSHA investigators, who will then decide whether to pursue that area of questioning.

The MSHA team leader has the authority to limit attendance at the interviews to include only MSHA, with or without state agency representatives.

The investigator considers the following factors in determining whether to limit attendance in this manner:

- Request by the witness for a confidential interview
- Public statements or disclosures from participants that may compromise the integrity of the investigation
- Behavior during interviews that could interfere with the effectiveness of the interview process
- Indications of disruptive conduct as evidenced during the physical inspection of the mine
- Other factors which might create an atmosphere not conducive to MSHA carrying out its investigatory responsibilities

Any one (or more) of these factors can result in MSHA's determination that interview attendance will be limited to MSHA with or without state agency representatives. Each witness may choose to be accompanied by a personal representative of his or her choosing.

There are certain protections for individuals who participate in accident investigations. If at any time you believe that you have been treated unfairly because of your cooperation in an investigation, immediately contact the investigator assigned to the accident investigation team.

Public Hearings

A public hearing is the questioning of witnesses under oath in a public forum (members of the general public including the media may be in attendance). Witnesses may appear voluntarily but they may also be compelled by subpoena to appear to answer questions and/or to produce records or other documents in their possession.

Because of procedural notice requirements, the public hearing questioning is normally done after the on-site investigation is completed or nearly completed. The witness contacts would be done in the course of the on-site investigation process. Based on all information available, a potential list of witnesses to be called to testify at the public hearing is developed.

The public must be given formal notice of a public hearing, and all persons subpoenaed to appear must receive personal service prior to their scheduled appearance. The public is free to attend a public hearing, but they are not free to participate in the conduct of the hearing except to the extent permitted by the person chairing the hearing.

The criteria below are designed to identify those accidents posing a situation where a public questioning forum may aid the accident investigation or would provide additional information and insights not available through other means of inquiry. Public hearings may only be scheduled with the concurrence and approval of the Administrator in consultation with the Associate Solicitor of the Division of Mine Safety and Health.

Accident investigations which may be evaluated for feasibility and possible benefit of public hearing are:

- Accident investigations of sufficient complexity, magnitude, or nature as to warrant appointment of a special accident investigation team by the Administrator with national office staff direct participation.
- Accidents that involve MSHA regulations which have been subject to controversy and/or substantial opposition prior to or upon publication, or standards which have been substantially affected by policy applications which are seen as controversial.
- Accidents involving technology that may require further research by MSHA or may not be completely understood by the general mining community and where additional research or guidance may need to be developed.

- Accidents of a recurring nature where the causes have been difficult to ascertain.
- Accidents where multiple management entities are involved, or where several entities represent portions of the labor force at a mine. These could be multiple independent contractors along with the mine operator, or multiple labor representation. The number of entities vying for position in the interview process and the scope of their involvement may complicate the normal interview process, and that fact alone may be reason to invoke the public hearing authority of the Agency.
- Where records and documents are needed to assist the accident investigation but will not be produced unless a subpoena is issued.

The accident investigation team (with the concurrence of the Administrator), or the Administrator alone, may decide to hold a public hearing after seeking advice from SOL and consulting with the Assistant Secretary. Any person may request that a public hearing be held.

The justification for a public hearing will be reviewed by the Administrator before a determination is made. The Administrator must designate in writing the person authorized to chair the public hearing and authorized to issue subpoenas and otherwise carry out the Secretary's authority and responsibilities under Section 103(b) of the Mine Act.

When MSHA determines that a public hearing is necessary, it must be convened at an appropriate time and place. Normally, the date, time, and place of the public hearing must be published by notice in the Federal Register. Prior to the hearing, you, as the miners' representative, will be notified in writing of the time and place of the public hearing.

All persons being summoned to appear at the public hearing must be served at least **5 days** prior to their appearance date unless extraordinary circumstances exist, or the person being summoned agrees to appear. Any person served with a subpoena to appear may file a motion to quash the subpoena prior to their appearance; however, unless specifically authorized not to appear, any person subpoenaed must physically appear at the scheduled time.

The hearing and its procedural rules must be under the general direction of the appropriate Administrator, in consultation with the Associate Solicitor for Mine Safety and Health. Parties seeking to appeal rulings of the hearing chairperson may file them with the appropriate Administrator. The determination of the Administrator on any issue pertaining to the conduct of the public hearing must be final for the Agency.

Conducting a Public Hearing

The following general rules apply:

- All witnesses (whether subpoenaed or appearing voluntarily) must be sworn and advised of their legal rights with regard to the giving of testimony.
- All persons having information relevant to the investigation, as established by preliminary questioning, must be given an opportunity to testify.

- A transcript of the hearing must be made by a court reporter and must be made available to the public.
- The hearing must be open to the public. No tape recorders, television cameras, or other photographic equipment will be permitted in the hearing room without the approval of the appropriate Administrator.
- Members of the public may attend the public hearing but may not participate in the questioning process except as permitted by the MSHA Chairperson.
- The public hearing will be conducted by MSHA. The state agency with authority for mine accident investigations will be invited to attend, with a representative who may ask questions of a witness.

NOTE: When circumstances warrant, further procedural rules applicable to the hearing may be established prior to or during the hearing.

Participation During Laboratory Analysis

MSHA may perform testing of equipment and other physical evidence as necessary to identify contributing or causative factors. As the miners' representative, you may observe the testing, along with State officials and the mine operator in most cases as long as it is safe and does not interfere with the process.

Participation During Review and Analysis of Evidence

MSHA carefully evaluates and analyzes all the facts and evidence gathered during the investigation before reaching a determination as to the cause or causes of a mine accident. Your participation in the preparation of the accident report along with the mine operator, and the state mining agency may be considered during this portion of the investigation. However, persons other than MSHA employees or consultants must not participate in the decision-making process of the accident investigation team.

Participation During the Review of Operator Records

Several areas of records may be explored and documented as a part of the investigation.

- Mine performance information – The accident history and compliance record for at least the past year.
- Examination books – Examination books or other appropriate records should be sought out early during the investigation.
- Operator accident report – A copy of the operator's accident investigation, as required by 30 CFR 50.11(b) should be requested from the operator.

- Training records – The investigation team should determine from MSHA Form 5000-23 and by interview, whether the victim(s) training or instruction related to the task being performed at the time of the accident.
- Rescue and recovery logs – If the accident resulted in the recovery of the accident site by mine rescue teams, a copy of the log should be obtained to document any changes made in the mine environment during the recovery.
- Digital records – Mine monitoring systems such as atmospheric monitoring systems, belt conveyor systems, main mine fan records, electrical systems, maps, etc.
- Other records – Any other records, reports, or information necessary to perform the investigation in addition to those specifically required to be maintained by the Act.

If MSHA takes these records as evidence, they will remain in the custody of the custodian of records assigned to the accident investigation team. You have a right to review these records. MSHA may set up a reading room for such reviews.

Participation in the Close-out Conference

At the conclusion of the on-site examination portion of the accident investigation, a close-out conference will be held with the mine operator and the miner's representative to discuss future investigative procedures and, if appropriate, the preliminary findings of the investigation. Where appropriate, the operator will be informed that the investigation is on-going and that enforcement action may be forthcoming.

Formal Investigation Report

A formal report is required in *all* investigations involving *fatal* accidents. The District Manager may require formal reports for other non-fatal or non-injury investigations. Promptly after the on-site investigation, witness interviews, and technical tests are completed, a report must be written under the direction of the District Manager or the AI Program Manager, whichever is appropriate.

The following pages show examples of report formats and explain how an accident report is structured.

(WITH INDEPENDENT CONTRACTOR)

MAI-1999-21

UNITED STATES
DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION
METAL AND NONMETAL MINE SAFETY AND HEALTH

REPORT OF INVESTIGATION

Surface Nonmetal Mine
(Sand and Gravel)

Fatal Machinery Accident
June 28, 1999

ABC Contracting Company (DE5)
Anytown, USA

at

ABC Pit and Plant
ABC Redi Mix, Inc.
Mining Town, Minerals County, Oregon
ID No. 51-12345

Accident Investigators

Manny Supervisor
Supervisory Mine Safety and Health Inspector

Roger Inspector
Mine Safety and Health Inspector

Fred C. Engineer
Civil Engineer

Dave D. Engineer, P.E.
Mechanical Engineer

Originating Office
Mine Safety and Health Administration
Western District
2060 Peabody Road, Suite 610
Vacaville, CA 95687
James M. Salois, District Manager

Note: "at" is used to reference the mine at which an independent contractor was involved in an accident. "At" is not used in this manner when independent contractors are not involved in the accident.

(WITHOUT INDEPENDENT CONTRACTOR)

MAI-1999-21

UNITED STATES
DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION
METAL AND NONMETAL MINE SAFETY AND HEALTH

REPORT OF INVESTIGATION

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Accident Investigators

Manny Supervisor
Supervisory Mine Safety and Health Inspector

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Civil Engineer

Dave D. Engineer, P.E.
Mechanical Engineer

Originating Office
Mine Safety and Health Administration
Western District
2060 Peabody Road, Suite 610
Vacaville, CA 95687
James M. Salois, District Manager

The purpose of the report is to inform stakeholders of the facts and circumstances that resulted in an accident, so that similar accidents might be prevented. Therefore, the report should convey the essential information as concisely and effectively as possible. Extraneous facts can be maintained in the investigation file but should not be included in the report unless necessary.

A formal accident report is generally double-sided printed. The Table of Contents should be overleaf of the report sketch, map or photograph. When the report is open, the Overview should face the sketch, map, or photograph (unless the sketch or photograph can fit on the same page as the Overview).

Here is a sample Table of Contents page:

Table of Contents

OVERVIEW	Page #
GENERAL INFORMATION	Page #
DESCRIPTION OF THE ACCIDENT	Page #
INVESTIGATION OF THE ACCIDENT	Page #
DISCUSSION	Page #
ROOT CAUSE ANALYSIS	Page #
CONCLUSION	Page #
ENFORCEMENT ACTIONS	Page #
APPENDICES	

The following describes the different sections of a formal report:

- Table of Contents – A Table of Contents is required for all fatal reports and for other reports exceeding nine pages.
- Overview – The purpose of the overview is to provide, early in the report, critical and concise information about the accident, the mine, and conclusion(s) related to the accident. **NOTE:** In most cases one or two short paragraphs can provide a full overview.
- The material presented in the overview must mirror the information entered into Section B, Items 23 and 24, Description of the Accident and Conclusion, on the Accident Investigation Data Form (MSHA Form 7000-50 series). The completed investigation file for each E06, E07, and E08 event must contain completed 7000-13 and 7000-50 forms.
- General Information – This includes mine type, location, ownership, management, relevant involvement of independent contractors, mining method, and any unique factors pertinent to the operation.

- Description of the Accident (Story of the Event) – This part describes mine or facility’s operation or work procedures beginning at an appropriate time. This description helps the reader to understand both the events leading up to the accident and the total mine environment if it related to or affected the accident.

For example: the roof conditions that have a bearing on the accident can be described; the electrical system, equipment, and voltages can be described to the extent necessary to understand the electrical installation and factors of the accident; or the mine ventilation can be described to the extent that it is involved in the accident.

NOTE: Information needed to understand the cause or contributing factors can be described in the discussion section. Extraneous information should not be included.

This section of the report continues with a description of the accident itself. Any recovery activities or post-accident activities can be covered in this section. Also, any MSHA participation in recovery activities can be woven into the story.

- Investigation of the Accident – This is a brief outline of the investigation. It states when it started and ended and describes activities (as necessary) to provide insight into the investigation.

NOTE: The names and/or job titles of interviewees must not be listed in the report. Rather, the number of interviewees should be stated in this section.

- Discussion – This section addresses the “who, what, when, where, why, and how” of the accident by discussing relevant factual details or factors bearing on the event.

Information about the accident is documented, discussed and evaluated in paragraph or subsection format.

Information supporting the determined cause of the accident, as well as information considered in excluding factors that did *not* cause or contribute to the accident is the foundation of the discussion.

Mining methods, equipment, plans, and work procedures believed to have an impact on or contribution to the accident can be discussed here. In addition, all information used to support any citations and orders issued as contributory violations goes here. Last, any new information learned during any phase of the investigation not mentioned elsewhere can be introduced and discussed here.

This section is used to document MSHA’s consideration and determination of the relative importance of the information learned in the investigation.

NOTE: The results of laboratory analyses included in the appendix can be referenced to eliminate the need for discussing the analyses here.

- Root Cause Analysis – This section identifies root causes and corrective actions.

NOTE: Corrective actions may include corrections already adopted by the operator, corrections yet to be adopted, or both.

- Conclusion – The conclusion must be fully supported by facts presented within the report. The conclusion states the cause(s) of the accident and lists the *direct, indirect,* and *root* cause(s) of the accident. Facts or information not discussed elsewhere in the report should not appear in the conclusion.
- Signature – The report must include the approval signature and date.
- Enforcement Action – This contains any enforcement action taken as part of the investigation including 103(k) orders, 107(a) orders, and citations, orders, or safeguards issued for conditions or practices which contributed to the occurrence of the accident. The narrative portion of contributing citations and orders should be shown verbatim along with the section cited, type of action, and the S&S designation. The violation number can also be shown.
- Appendices – The report must contain the following appendices (where applicable).

Test Results – In most cases it will be sufficient to include an Executive Summary prepared by the investigators which states the results of the tests. The Executive Summary should, however, provide information as to how interested persons may obtain a copy of the complete report of all tests of equipment made in conjunction with the investigation.

Sketches and/or Photographs – Additional sketches and photographs necessary to clarify the report must be included.

Charts, Tables, Illustrations, and Maps – This information can be included to clarify or substantiate the report.

Review of Report

A completed draft of the report is emailed to the appropriate AI Program Manager for review.

NOTE: A copy of any enforcement actions issued or anticipated must accompany the draft report. The report is finalized, printed, and released after it is reviewed and approved by MSHA Headquarters.

A conference call (including the District Manager or designee, the investigator, Regional SOL, national office SOL Division of Safety designee, and ASI Program Manager or staff) is conducted to discuss proposed enforcement actions.

Report Release

MSHA policy is to hand-deliver a copy of the final fatal accident report to the victim's family, the mine operator, and appropriate labor organization or miners' representative prior to its release to any other entity.

- A copy of the report is hand-delivered to the victim(s)' family first.
- A conference is scheduled with company officials responsible for the mine for hand-delivery of the report following delivery to the victim's family. A meeting with the labor organization or miners' representative is also arranged. The contents of the report should be briefly explained with discussions on any measures to prevent future similar accidents.

Once copies of the report have been provided to the victim's family, the mine operator, and the labor organization or miners' representative, the report is released to the general public. In some cases, a press statement is issued along with the report. Following the meetings an electronic copy of the final report is posted on MSHA's website.

NOTE: MSHA releases Preliminary Accident Reports, Fatalgrams, and Final Investigation Reports of fatal accidents as a means to prevent mining accidents by providing important and practical fatal accident information to the mining community as soon as possible. These items may be viewed at MSHA's website.

CHAPTER 15 - RIGHTS CONCERNING RECORDS, PLANS, MAPS, EVACUATION and EMERGENCY PREPAREDNESS DRILLS, and OTHER EMERGENCY INFORMATION

Roof Control Plans (Underground Coal Mines)

Under Section 302(a) of the Act, you have a right to inspect a copy of the approved roof control plan of the underground coal mine at which you are the miners' representative.

30 CFR 75.220(e) says that the approved roof control plan and any revisions are to be available to you and the miners working at the mine.

Mine Maps (Underground Coal Mines)

Under Section 312(b) of the Act, you have a right to inspect the maps of the underground coal mine where you work.

This includes the mine map on which roof falls are plotted as explained in 30 CFR 75.223(c), and the map of all electrical mine installations as covered in Section 305(c) of the Act and 30 CFR 75.508.

Mine Emergency Response Plan (Underground Coal Mines)

You and the miners at your mine have a right to review your mine's emergency response plan. This is specified in Section 316(b)(1)(D) of the Act. MSHA reviews this plan at least every six months. You may submit comments on the plan as part of the review process. MSHA considers all comments submitted by you or miners at the mine that could enhance a miner's ability to survive in an emergency.

Ventilation Plans (Underground Coal Mines)

As the miners' representative you must be given notice of a new ventilation plan or any change in an existing plan by the operator at least **five days** before the plan is submitted to MSHA. At the time of notification, a copy of the plan can, should be made available to you, upon request.

If a ventilation plan has to be revised immediately, the operator must provide notification of the proposed revision and, upon request provide a copy of the proposed revision to the plan to the miners' representative when it is submitted to MSHA for approval.

Copies of proposed ventilation plans and any proposed revisions must also be posted on the mine bulletin board. These documents remain posted until they are approved, withdrawn, or denied.

You may submit timely written comments regarding the proposed plan or revision to the District Manager. The District Manager will give copies of these comments to the operator if they are requested.

The District Manager will notify the operator, in writing, of the plan approval or denial and provide a copy of the notification to the miners' representative.

If a plan or revision is approved, copies of the plan and any revisions to the plan are made available to you for inspection, upon request. Operators must instruct miners who are directly affected by provisions of the plan or revision before the approved ventilation plan or revision takes effect.

Approved ventilation plans and revisions must be posted by the operator on the mine bulletin board within **one working day** after notification of approval. Approved plans and revisions stay posted on the mine bulletin board as long as they remain in effect.

Records of Examinations, Tests and Reports You May Review (Underground Coal Mines)

These include:

- Pre-shift examinations.
- Weekly examinations for hazardous conditions.
- Weekly ventilation examination reports.
- Main mine fan pressure, fan examinations and data produced by the fan monitoring system.
- Electrical equipment examinations. **NOTE:** Records of circuit breaker examinations are available to miners' representatives and miners.
- Machine mounted methane monitor calibrations.
- Atmospheric Monitoring System operation, examination, testing and calibration.
- Training and qualification program records for persons working on diesel-powered equipment.
- Records relating to seals at underground coal mines.

Both you and the miners at your mine may look at these records of examinations, tests, and reports made in underground coal mines.

- Records of circuit breaker examinations.
- Procedures used for mining into inaccessible areas. **NOTE:** These records must also be posted near the site of such mining.
- Records regarding inspection and tests of fire suppression systems installation and maintenance requirements.

- Certificates regarding conduct of mine emergency evacuation training and drills (records maintained for one year).
- Respirable dust samples (must be posted on the mine bulletin board for at least **31 days**).

Mine Emergency Evacuation, Training and Drills (Underground Coal Mines)

At the completion of each training or drill required in this section, the operator is to certify by signature and date that the training or drill was held in accordance with the requirements of 30 CFR 75.1504. Certifications are to be kept at the mine for **a year** and must be made available to you for review.

All miners should receive a copy of the training record upon request.

Ground Control – Rock Fixtures (Underground Metal and Nonmetal Mines)

You have the right to examine the manufacturer's certification that roof and rock bolts and accessories are manufactured and tested in accordance with the requirements set forth in ASTM F-432-95, "Standard Specifications for Roof and Rock Bolts and Accessories."

Limit on Exposure to Diesel Particulate Matter – Posting of Application (Underground Metal and Nonmetal Mines)

An operator may file an application for extension of time if the mine needs time to achieve compliance with the final diesel particulate matter limits of 30 CFR 57.5060 due to technological or economic constraints. If such an application is filed, it must be posted at the mine site for **at least 30 days prior** to the date of application. The operator must provide you a copy of the application.

The extensions are limited to a period of **one year** from the date of the approval. Additional extensions may be provided limited to **one year**.

CHAPTER 16 – FREEDOM OF INFORMATION ACT (FOIA)

Understanding the Freedom of Information Act Process

The Freedom of Information Act (FOIA), 5 U.S.C. § 552, allows the public to request records maintained by any Federal agency. Under this Act, agencies are required to provide the requested records unless they are exempt or excluded from disclosure.

To get information you must make a “FOIA request.” This is a written request in which you describe the information you want in as much detail as possible.

If you request records relating to another person, and disclosure of the records could invade that person’s privacy, they will not be disclosed to you.

A FOIA request can be made for any agency record. The FOIA does not require an agency to do research for you, to analyze data, to answer written questions, or to create records in response to a request.

The Freedom of Information Act requires that Federal agencies release certain information automatically without the need for you to make a request. So, before you send in a FOIA request, it’s a good idea to look at an agency’s website first to see if the information is already available.

You do not need a special FOIA form; however, your request must:

- Be in writing
- Reasonably describe the information you want

Most agencies now accept electronic FOIA requests (including by web form, e-mail, or fax).

Each Federal agency handles its own records in response to requests. Your request will receive the quickest possible response if it is addressed directly to the agency and office that you believe has the records you are seeking.

To request records from the Mine Safety and Health Administration (MSHA) by e-mail, send your request to the following:

IMPORTANT – FOIA REQUESTS VIA E-MAIL

Requests submitted by e-mail must be sent to: foiarequest@dol.gov

The words “FOIA Request” must be included in the subject line.

Requests sent to any other e-mail address will NOT be accepted.

Requests submitted by mail, delivery service, courier, or fax may be sent to either the National MSHA FOIA Officer or the appropriate FOIA Coordinator for the program office that maintains the records.

MSHA NATIONAL FOIA OFFICER

U.S. Department of Labor
FOIA Officer
1100 Wilson Blvd., Rm. 2314
Arlington, VA 22209-3939
Phone: 202-693-9542
Fax: 202-693-9442

You can find a list of MSHA program office contacts at:

<http://www.msha.gov/readroom/FOIARequest.asp>

If you have questions about your request, contact the FOIA Coordinator to whom you sent the request, or the MSHA FOIA Office at 202-693-9542 or MSHA.FOIA@dol.gov

You do not have to justify or explain the reason for making your request; however the reason “why” you are requesting the documents or information is important in two circumstances:

- When you are requesting expedited processing
- When you are requesting a fee waiver

Under 29 CFR 70.25 you may ask to have your request expedited. MSHA generally processes FOIA requests on a first in-first out basis. MSHA may take your request ahead of other requests already pending in the processing queue if you can demonstrate a “compelling need” such as:

- Imminent threat to the life or physical safety of an individual
- Urgency to inform the public concerning actual/alleged Federal Government activity, if made by a person primarily engaged in disseminating information (such as a member of the media).
- Loss of substantial due process rights
- Matters of widespread and exceptional media interest in which there exist possible questions about government’s integrity which affect public confidence

Understanding Fees and Waivers

There is no initial fee required to submit a FOIA request, but the FOIA does provide for fees to be charged in certain instances.

The filing of a request will be deemed to constitute an agreement by you to pay all applicable fees charged up to and including \$25.00, unless you request a waiver of fees. When making a request, you may specify a willingness to pay a greater or lesser amount. Your request will be processed if a disclosure officer reasonably believes that the fees are likely to exceed the amount to which you have originally consented, absent supplemental written consent by you to proceed after being notified of this determination.

When the estimated costs are likely to exceed the amount of fees to which you have consented, you must be notified. The notice may invite you to reformulate the request to satisfy your needs at a lower cost.

There are four types of requests:

- *Commercial use request.* When a requester makes a commercial use request, search costs, reproduction costs, and review costs will be assessed in their entirety.
- *Educational or non-commercial scientific institution request.* When an educational or non-commercial scientific institution makes a request, only reproduction costs will be assessed, excluding charges for the first 100 pages.
- *Request by representative of news media.* When a representative of the news media makes a request, only reproduction costs will be assessed, excluding charges for the first 100 pages.
- *All other requests.* Requesters making a request which does not fall within the other categories will be charged search costs and reproduction costs, except that the first 100 pages of reproduction and the first two hours of search time will be furnished without charge. Where computer searches are involved, the monetary equivalent of two hours of search time by a professional employee will be deducted from the total cost of computer processing time.

Search Costs

When a search for records is performed by a clerical employee, a rate of \$5.00 per quarter hour will be applicable. When a search is performed by professional or supervisory personnel, a rate of \$10.00 per quarter hour will be applicable.

You may be charged for time spent searching even if no responsive records are located or information is withheld from records located using appropriate exemption from disclosure.

If the search for requested records requires transportation of the searcher to the location of the records or transportation of the records to the searcher, all transportation costs in excess of \$5.00 may be added to the search cost.

Reproduction Costs

The standard copying charge for records in black and white paper copy is \$0.15 per page. This charge includes the operator's time to duplicate the record. When responsive information is provided in a format other than 8 1/2 x 11 or 11 x 14 inch black and white paper copy, such as computer tapes, disks and color copies, you may be charged the direct costs of the tape, disk, audio-visual or whatever medium is used to produce the information, as well as the direct cost of reproduction, including operator time. The disclosure officer may request that if a medium is requested other than paper, the medium will be provided by you.

Review Costs

Costs associated with the review of records will be charged for work performed by a clerical employee at a rate of \$5.00 per quarter hour when applicable. When professional or supervisory personnel perform work, a rate of \$10.00 per quarter hour will be charged, when applicable. Except as noted in this paragraph, charges may only be assessed for review the first time the records are analyzed to determine the applicability of specific exemptions to the particular record or portion of the record.

You would not be charged for review at the administrative appeal level regarding the applicability of an exemption already applied at the initial level. When, however, a record has been withheld under an exemption which is later determined not to apply but is reviewed again at the appellate level to determine the potential applicability of other exemptions, the costs for an additional review will be assessed.

Mailing Cost

Where requests for copies are sent by mail, no postage charge will be made for transmitting by regular mail a single copy of the requested record to you, or for mailing additional copies where the total postage cost does not exceed \$5.00. However, where the volume of paper copy or method of transmittal requested is such that transmittal charges to the Department are in excess of \$5.00, the transmittal costs will be added.

MSHA will notify you (in writing) if they believe that the total fees to process your request will exceed \$25.00. You will also have an opportunity to either modify or limit the scope of your request in order to reduce the fees.

If you agree to pay the fees for the records search, you may be required to pay the fees even if MSHA does not find any responsive records, or if the records located by MSHA are determined to be exempt entirely from disclosure. If you refuse to agree to pay the fees, your request will not be processed.

Reduction or Waiver of Fees

Requirements for waiver or reduction of fees.

Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (d) of 29 CFR 70.40 where a Disclosure Officer determines, based on all available information, that the requester has demonstrated that:

- Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and
- Disclosure of the information is not primarily in your commercial interest

To determine whether the requirements are met, these factors will be considered:

- The subject of the request:
 - ♦ Whether the subject of the requested records concerns “the operations or activities of the government.”
 - ♦ The subject of the requested records must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote or diminished.
 - ♦ The informative value of the information to be disclosed:
 - ♦ Whether the disclosure is “likely to contribute” to an understanding of government operations or activities.
 - ♦ The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be “likely to contribute” to an increased public understanding of those operations or activities.
 - ♦ The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public’s understanding.

Requests for waiver or reduction of fees must be submitted along with the request or before processing of the request has begun.

Requests for fee waivers from individuals who are seeking records pertaining to them usually do not meet this standard. In addition, your inability to pay fees is not a legal basis for granting a fee waiver.

Privacy Act Requesters

A request from an individual or on behalf of an individual for a record maintained by that individual’s name or other unique identifier which is contained within the Agency’s system of records will be treated under the fee provisions at 29 CFR 71.6.

Payment of Fees

Where the cost of collecting and processing a fee to be assessed to a requester exceeds the amount of the fee which would otherwise be assessed, no fee need be charged. Fees which do not exceed \$15.00 usually need not be collected.

Advance Payments and Billing

Prior to beginning to process a request, the disclosure officer will make a preliminary assessment of the amount that can properly be charged to you for search and review time and copying costs.

Where a Disclosure Officer determines or estimates that a total fee to be charged under this section will be more than \$250.00, the Disclosure Officer will require you to make an advance payment of an amount up to the entire anticipated fee before beginning to process the request. The Disclosure Officer may waive the advance payment where the Disclosure Officer receives a satisfactory assurance of full payment from you if you have a history of prompt payment of an amount similar to the one anticipated by the request.

If you previously failed to pay a properly charged FOIA fee to any component of the Department of Labor within **30 days** of the date of billing, a Disclosure Officer will require you to pay the full amount due, plus any applicable interest and to make an advance payment of the full amount of any anticipated fee, before processing your request.

Timeframes

- MSHA is required to make a determination to your request in **20 working days** (excluding weekends and legal holidays).
- MSHA may require a one-time extension for the following unusual circumstances:
 - ♦ The need to search for/collect records from facilities separate from the office processing your request.
 - ♦ The need to search for/collect/examine a voluminous amount of separate and distinct records.
 - ♦ The need to consult with another agency.

Extensions for unusual circumstances will be outlined in a written notification to you that will outline the reasons for the extension and the date on which a determination can be expected.

If an extension requires more than an additional **ten working days**, you will be notified in writing and given an opportunity to narrow the scope of the request.

Once MSHA receives your FOIA request, you will usually receive a letter acknowledging the request with an assigned tracking number.

MSHA will contact you if they require additional information before starting to process your request.

The Agency searches typically for records in response to your request and then reviews those records to determine which – and what parts of each – can be released.

The Agency may withhold any information protected from disclosure by appropriate FOIA exemptions. The releasable records are then sent to you.

It is important to understand that not all records must be released under FOIA. Congress established certain categories of information that are not required to be released in response to a FOIA request because their release would be harmful to governmental or private interests.

Response to Your Request

The Final Response Letter to you may include:

1. The name and title or position of the disclosure officer.
2. A brief statement of the reason or reasons for the denial, including the FOIA exemption or exemptions relied upon in denying the request. Deletions should be indicated at the place in the record where the deletion is made.
3. An estimate of the volume of records of information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption.
4. A statement that the denial may be appealed.

MSHA typically uses the following FOIA exemptions.

- *Exemption 2:* Information related solely to the internal personnel rules and practices of an agency.
- *Exemption 4:* Information concerning business trade secrets or other confidential commercial or financial information.
- *Exemption 5:* Information that concerns communications within or between agencies which are protected by legal privileges, including but not limited to:
 1. Attorney-Work Product Privilege
 2. Attorney-Client Privilege
 3. Deliberative Process Privilege
- *Exemption 6:* Information that, if disclosed, would invade another individual's personal privacy.

- *Exemption 7:* Information compiled for law enforcement purposes if one of the following harms would occur. Law enforcement information is exempt if it:
 - ♦ 7(A) Could be reasonably expected to interfere with enforcement proceedings
 - ♦ 7(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy
 - ♦ 7(D) Could reasonably be expected to disclose the identity of a confidential source
 - ♦ 7(E) Would disclose techniques and procedures for law enforcement investigations or prosecutions
 - ♦ 7(F) Could reasonably be expected to endanger the life or physical safety of any individual

Under FOIA exemptions 2, 5, and 7(a), MSHA has the discretion to release certain information when there is no foreseeable harm in doing so and the disclosure is not otherwise prohibited by law.

Payment of FOIA Requests

Example

You or your organization is considered an “all other” use requester. Under the FOIA, “all other” use requesters are charged for search (minus the first 2 hours) and duplication costs with 100 pages free. The total amount billed for processing these records is \$926.45, which includes the following fees:

OR

Your organization is considered a commercial requester. Under the FOIA, commercial requesters must pay all fees associated with processing their request. The total cost for processing this record is \$926.45, which includes the following fees:

Search Time - Clerical (3 hours @ \$20.00/hour)	\$ 60.00
Review Time – Clerical (4.25 hours @ \$20.00/hour)	\$ 80.00
Review Time – Professional 7 hours @40.00/hour	\$280.00
3,043 pages @ .15/page	\$465.45
9 CDs @ \$5.00/CD	<u>\$ 45.00</u>
Total Charges	\$926.45

To pay by credit card: Contact MSHA Finance Office, at 303-231- 5872.

If you prefer, make a check or money order payable to the Department of Labor – MSHA and mail it to:

Mine Safety and Health Administration

Finance Office

Post Office Box 25367, DFC

Denver, CO 80225-0367

Please note on the check, **“Payment of FOIA Request “MSHA FOIA Control Number”**

Notice to Customers Making Payment by Check

If you send us a check, it will be converted into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours, and will be shown on your regular account statement.

You will not receive your original check back. We will destroy your original check, but we will keep the copy of it. If the EFT cannot be processed for technical reasons, you authorize us to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, we may try to make the transfer up to 2 times and we will charge you a one-time fee of \$10.00, which we will also collect by EFT.

Administrative Appeal

You can file an appeal to the Solicitor of Labor within **90 days** of the date of your determination letter when:

- A request for access to records has been denied in whole or in part.
- A requester disputes a determination that records cannot be located or have been destroyed.
- A requester disputes a determination by a disclosure officer concerning the assessment or waiver of fees.
- A component fails to respond to a request within the time limits set forth in the FOIA.

In order to facilitate processing of the appeal, the appeal should include:

- A written statement that addresses the grounds for appeal,
- Any supporting statements or arguments,
- The requester's mailing address and daytime telephone number, and
- Copies of the initial request and the disclosure officer's response.

If you believe that there are additional records that have not been located in response to your request, include why you think they exist and perhaps, where you believe they may be located.

Address your appeal to:

Solicitor of Labor
Division of Management and Administrative Legal Services
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room N-2428
Washington, D.C. 20210

The envelope and the letter of appeal should be clearly marked: "Freedom of Information Act Appeal."

Appeals may be submitted by e-mail to foiaappeal@dol.gov. Appeals submitted to any other e-mail address will not be accepted.

You may also fax your appeal to: (202) 693-5538.

The Solicitor of Labor, or designee, will review the appeal and make a determination whether the action of the disclosure officer was proper and in accordance with the applicable law.

The Solicitor of Labor will notify you when a determination on appeal has been made and notify you of your rights to seek judicial review.

Disclosure Officers are those officials authorized to grant or deny access to MSHA records requested under the FOIA.

Persons holding the following positions are designated as MSHA Disclosure Officers:

- ♦ Assistant Secretary
- ♦ Deputy Assistant Secretary
- ♦ Administrators
- ♦ Deputy Administrators
- ♦ Directors
- ♦ Deputy Directors
- ♦ Chief, Office of Congressional and Legislative Affairs
- ♦ Technical Support Center Chiefs
- ♦ Division Chiefs, Coal Mine Safety and Health
- ♦ Division Chiefs, Metal and Nonmetal Mine Safety and Health
- ♦ Accident Investigation Program Managers
- ♦ District Managers
- ♦ Assistant District Managers
- ♦ Superintendent, National Mine Health and Safety Academy
- ♦ Small Mines/Mine Emergency Operations Coordinator

Sample FOIA letters are on the following pages.

FOIA Officer, MSHA
U.S. Department of Labor – MSHA
1100 Wilson Boulevard, Room 2314
Arlington, Virginia 22209-3939

Re: *Freedom of Information Act Request*

Dear FOIA Officer:

Under the provisions of the Freedom of Information Act, 5 U.S.C. § 552, I am requesting copies of all documents or materials in the possession of the Mine Safety and Health Administration (MSHA) that relate to the inspection conducted at the ABC Mining Company, 111 Mine under Event No. 123456.

The terms “document” and/or “material” include, but are not limited to, all notes, transcripts, sketches, diagrams, memoranda, reports, photographs, videos, and/or correspondence relating to any investigation associated with this event.

If there are any fees for searching for or copying the records I have requested, please inform me before you fill the request or please supply the records without informing me if the fee does not exceed \$50.00.

I would appreciate your handling this request as quickly as possible, and I look forward to hearing from you within 20 days as the law stipulates.

Sincerely,

Signature
Name
Address
City, State, Zip code

FOIA Officer, MSHA
U.S. Department of Labor – MSHA
1100 Wilson Boulevard, Room 2314
Arlington, Virginia 22209-3939

Re: *Freedom of Information Act Request*

Dear FOIA Officer:

Under the provisions of the Freedom of Information Act, 5 U.S.C. § 552, I am requesting copies of all documents or materials in the possession of the Mine Safety and Health Administration (MSHA) that relate to the inspection conducted at the ABC Mining Company, 111 Mine under Event No. 123456.

The terms “document” and/or “material” include, but are not limited to, all notes, transcripts, sketches, diagrams, memoranda, reports, photographs, videos, and/or correspondence relating to any investigation associated with this event.

I am requesting a waiver of any fees in connection with this request. I am the miners’ representative at the 111 Mine. The information in these documents will contribute significantly to the public’s understanding of the government’s operations or activities to protect miner’s health and safety at our nation’s mines.

If all or any part of this request is denied, please cite the specific exemption(s) which you believe justifies your refusal to release the information, and inform me of the appeal procedures available to me under the law.

I would appreciate your handling this request as quickly as possible, and I look forward to hearing from you within 20 days as the law stipulates.

Sincerely,

Signature
Name
Address
City, State, Zip code

Judicial Review

The FOIA provides you with the right to challenge MSHA's decision in Federal court. The Agency has the burden of proof to demonstrate to the court that no record has been improperly withheld.

You can view a copy of the Freedom of Information Act at:

<http://www.msha.gov/regs/act/foia.htm>

You can find out more about FOIA at:

<http://www.foia.gov/faq.html#whatis>

CHAPTER 17 – FINDING EMPLOYER INFORMATION

MSHA's Data Retrieval System (DRS) is a useful place to find employer information. The information provided by the DRS is based upon data gathered from various MSHA systems.

The DRS home page, which contains links to different sections of the database is at <http://www.msha.gov/drs/drshome.htm#HDR>

Let's find out more about searching the database. Remember that the more information you provide in your search the more refined (on target) your search will be.

Mine Information Search

Entering a valid MSHA Mine Identification Number (Mine ID) or Contractor Identification Number (Contractor ID) is the easiest way for you to search for employer information.

A Mine ID is a unique seven-digit identification number assigned by MSHA to a surface or underground mining operation.

A Contractor ID is a unique alphanumeric (letters and numbers) identifier assigned by MSHA to a contractor upon request.

The instructions on your computer screen look like this when you search by Mine ID.

Mine Identification Number (ID) Search
If you know the Mine ID, use this function. It is the quickest way to find your information!
Only enter the 7 digits of the Mine ID. Do not include the dash.

SEARCH

MSHA Mine ID : (7 Digits – No Dash)

Bottom of Form

If you do not know the Mine ID, use this function. You may search by entering an operator's name, a partial operator's name **or** a mine name or partial mine name. You may further refine your search by selecting a state for your search. If you wish to further refine your search, you may select whether it is a coal operation or metal/nonmetal operation. You will be given all mines if no choice is made. By default, we are only providing you all mines that are not in an "Abandoned Status". After submitting your request you will be presented with a listing of results that are sorted by state and operator name. At the right hand side of each column is an icon that reads "More Info". This will provide you with mine-specific information and also other reports for that mine.

☒ **Include/Exclude Abandoned Mines**
We have excluded abandoned mines by default in order to limit the returns for your search. To include Abandoned Mines in your search results, uncheck the box.

Operator Name:

OR

Mine Name:

State: (Optional w/ Name Searches)

Mines Desired:

SEARCH

Contractor Information Search

Searching for contractor information is similar to searching for mine information.

The instructions on your computer screen look like this when you search by Contractor ID.

Contractor Identification Number (ID) Search

If you know the Contractor ID, use this function. It is the quickest way to find your information!

Contractor ID:

SEARCH

If you search by contractor name, your computer screen looks like this:

Contractor Name Search

If you do not know the Contractor ID, use this function. You may search by entering a contractor's name, a partial contractor's name. You may further refine your search by selecting a state for your search. After submitting your request you will be presented with a listing of results that are sorted by state and contractor name. At the right hand side of each column is an icon that reads "More Info". This will provide you with contractor-specific information and also other reports for that contractor.

You may search by Contractor Name or partial name.

Adding a **State** to your Name search will help refine the results.

Contractor

Name:

State:

All States

SEARCH

Mines by Current Controller Search

A controller is a company's chief accounting officer who is responsible for financial and managerial accounting.

Here is what the screen looks like when you search by the current controller's name. :

Current Controller Name Search

You may search for mines by the current controller name. You may search by entering a controller's name, a partial controller's name. After submitting your request you will be presented with a listing of controllers based on your request. You may then select the "See Mines" option. This will result in a list of mines for this controller.

It is recommended that if the controller is the name of an individual, you use the last name only. Although this may result in more returns, it will alleviate missing any possible controllers.

Current Controller Name:

SEARCH

Extended Search Page

Use the extended search page to further refine (narrow) your search.

The extended search page screen looks like this.

- To Search for Mines by State, then County and then by Commodity...

Please begin by selecting a state...

Alabama

SEARCH

-
- To Search for Mines by State and then Commodity...

SEARCH

- To Search for Mines by Mining District and then Commodity...

SEARCH

After submitting your request you will see a listing of results sorted by state and operator name. At the right hand side of each column is an icon that reads "More Info." This will provide you with additional mine-specific information and other reports for that mine. This is the same feature you are accustomed to using when you do a Mine ID search on the Mine Data Retrieval System.

Be patient! Some search results are lengthy and take a long time to generate. MSHA has, therefore, excluded all mines with an "abandoned" status. If you wish to see a list of abandoned mines for any of your requests, just uncheck the box designated for this.

There are totals for each search provided at the bottom of each of the returns.

"High Dollar" Citations and Orders

You can find this information on the system as well. The screen looks like this

"High Dollar" Citations and Orders

SEARCH