

(b) Practice under the close supervision of a competent person may be used to fulfill the requirement for task training under this section.

(c) Task training provided under this section may be credited toward new miner training, as appropriate.

#### § 46.8 Annual refresher training.

(a) At least once every 12 months, you must provide each miner with no less than 8 hours of refresher training.

(b) The refresher training must include instruction on changes at the mine that could adversely affect the miner's health or safety, and may include instruction on such subjects as: applicable health and safety requirements, including mandatory health and safety standards; transportation controls and communication systems; escape and emergency evacuation plans, firewarning and firefighting; ground control; working in areas of highwalls, water hazards, pits, and spoil banks; illumination and night work; first aid; electrical hazards; prevention of accidents; health; explosives; and respiratory devices.

#### § 46.9 Records of training.

(a) Upon a miner's completion of each training program, you must record and certify on MSHA Form 5000-23, or on a form that contains the information listed in paragraph (b) of this section, that the miner has completed the training. False certification that training was completed is punishable under section 110(a) and (f) of the Act.

(b) The form must include:

(1) The printed full name of the person trained (first, middle, last names);

(2) The type of training completed, the duration of the training, the date the training was received, and the name of the competent person who provided the training;

(3) The mine name, MSHA mine identification number, and location of training (if an institution, the name and address of the institution).

(4) The statement, "False certification is punishable under section 110(a) and (f) of the Federal Mine Safety and Health Act," printed in bold letters and in a conspicuous manner; and

(5) A statement signed by the person designated as responsible for health and safety training in the MSHA-approved training plan for the mine that states, "I certify that the above training has been completed."

(c) You must provide a copy of the training certificate to each miner at the completion of each training program. When a miner leaves your employ, you

must provide each miner with a copy of his or her training certificates upon request.

(d) You must make available at the mine site a copy of each miner's training certificates for inspection by us and for examination by miners and their representatives. If training certificates are not maintained at the mine site, you must have the capability to provide the certificates upon request by us, miners, or their representatives.

(e) You must maintain copies of training certificates and training records for each currently employed miner during his or her employment and for at least 12 months after a miner terminates employment.

#### § 46.10 Compensation for training.

(a) Training must be conducted during normal working hours; persons required to receive such training must be paid at a rate of pay that corresponds to the rate of pay they would have received had they been performing their normal work tasks.

(b) If training is given at a location other than the normal place of work, persons required to receive such training must be compensated for the additional costs, including mileage, meals, and lodging, they may incur in attending such training sessions.

#### § 46.11 Hazard training.

(a) You must provide site-specific hazard training to any person who is not a miner as defined under § 46.2 of this part but is present at a mine site under this part, including:

- (1) Scientific workers;
- (2) Delivery workers and customers;
- (3) Occasional, short-term

maintenance or service workers, or manufacturers' representatives; and

(4) Outside vendors, visitors, office or staff personnel who do not work at the mine site on a continuing basis.

(b) You must provide site-specific hazard training to each person who is an employee of an independent contractor and who is working at the mine as a miner, as defined in § 46.2 of this part, unless the miner receives newly-hired experienced miner training at the mine under § 46.6.

(c) You must provide hazard training under this section before the affected person is exposed to mine hazards.

(d) You may provide hazard training through the use of written hazard warnings, oral instruction, signs and posted warnings, walkaround training, or other appropriate means.

(e) Hazard training under this section is not required for any person who is accompanied at all times by an experienced miner who is familiar with hazards specific to the mine site.

#### § 46.12 Responsibility for training.

(a) Each production-operator has primary responsibility for providing site-specific hazard training to employees of independent contractors who are required to receive hazard training under § 46.11 of this part. Further, the production-operator must provide information to each independent contractor who employs a person at the mine on site-specific hazards associated with the mine site and the obligation of the contractor to comply with our regulations, including the requirements of this part.

(b) Each independent contractor who employs a miner, as defined in § 46.2, at the mine has primary responsibility for complying with §§ 46.3 through 46.10 of this part, including providing new miner and newly-hired experienced miner training, new task training, and annual refresher training. Further, the independent contractor must inform the production-operator of any hazards of which the contractor is aware that may be created by the performance of the contractor's work at the mine.

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## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### 30 CFR Part 46

RIN 1219-AB17

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

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule, notice of public hearings.

**SUMMARY:** We (MSHA) are announcing public hearings on our proposed rule on the training and retraining of miners engaged in shall dredging or employed at sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mines. The proposed rule appears elsewhere in this issue of the **Federal Register**.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for hearing dates. The record will remain open after the hearings until June 16, 1999.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** for hearing locations.

Send requests to make oral presentations—

(1) By telephone to MSHA, Office of Standards, Regulations, and Variances at 703-235-1910;

(2) By mail to MSHA, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203-1984;

(3) By facsimile to MSHA, Office of Standards, Regulations, and Variances at 703-235-5551; or

(4) By electronic mail to comments@msha.gov.

**FOR FURTHER INFORMATION CONTACT:**

Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Arlington, VA 22203-1984. She can be reached at cjones@msha.gov (Internet E-mail); 703-235-1910 (Voice); or 703-235-5551 (Fax).

**SUPPLEMENTARY INFORMATION:** We published a proposed rule elsewhere in this issue of the **Federal Register** addressing training and retraining of miners of mines where Congress has prohibited us from expending funds to enforce training requirements since fiscal year 1980. The proposed rule would implement the training requirements of § 115 of the Federal Mine Safety and Health Act of 1977 (Mine Act) and provide for effective miner training at the affected mines.

**I. Hearing Dates and Locations**

We will conduct four public hearings to receive comments from interested parties on the proposed rule. All four hearings are scheduled to run from 8:00 a.m. to 5:00 p.m., but will continue into the evening if necessary to accommodate as many participants as is reasonably possible. We will hold the hearings on the following dates at the following locations:

1. May 18, 1999, Holiday Inn & Suites, 5905 Kirkman Road, Orlando, Florida 32819, Tel. No. (407) 351-3333.

2. May 20, 1999, Sacramento Convention Center, 1400 J Street, Sacramento, California 95814, Tel. No. (916) 264-5291.

3. May 25, 1999, Marriott Pittsburgh Airport, 100 Aten Road, Pittsburgh, Pennsylvania 15108, Tel. No. (412) 788-8800.

4. May 27, 1999, Department of Labor, Frances Perkins Building, Auditorium, 200 Constitution Avenue, NW., Washington, DC 20210, Tel. No. (202) 219-7816.

**II. Issues**

Speakers may raise or address any issues relevant to the rulemaking. However, we are specifically interested in comments on certain issues. A short discussion of these issues follows.

*Definition of "Miner"*

We are interested in whether the proposed definition of "miner" is appropriate. Workers who fit the definition of "miner" under the proposal would be required to receive comprehensive training, including new miner training or newly-hired experienced miner training, as appropriate. Persons who fall outside this definition would be required to receive site-specific hazard training.

Under the proposal, a person engaged in mining operations integral to extraction or production would be considered a "miner." We intend that the definition of "miner" include those workers whose activities are related to the day-to-day process of extraction or production.

We are particularly interested in recommendations for final rule language that would help to clarify the scope and application of this definition.

Specifically, we would like comments on whether the final rule's definition of "miner" should include persons whose exposure to mine hazards is frequent or regular, regardless of whether they are engaged in extraction or production, or who are employed by the production-operator, similar to the approach taken in our training regulations in part 48. Another possible approach would be to characterize a person's activities more specifically in terms of how integral or essential they are to extraction or production at the time.

*Plan Approval Process*

The proposal would require each operator to develop and implement a written training plan that includes programs for training new miners and newly-hired experienced miners, training miners for new tasks, annual refresher training, and hazard training. Plans that include the minimum information specified in the proposal would be considered approved and would not be required to be submitted to us for formal review, unless the operator, a miner or a miners' representative request it. Miners and their representatives would also be given the opportunity to comment on the plan before it is implemented.

The approach taken in the proposal for plan approval recognizes that, while our review of written training plans could provide an initial check on the quality of the program, such review could not ensure that the program is successful in its implementation. Rather than expending our resources on the review and approval of training plans at all of the mines affected by this rule, we would instead direct those resources

toward verification of the effectiveness of training plans in their execution, and in assisting operators in developing and providing quality training to their employees. Similarly, operator and training providers would be able to focus on the development and administration of training plans rather than on traditional procedures to gain our approval.

We are interested in comments on whether the proposed approach is appropriate, and whether we should require information in addition to what is required in the proposal before we consider a plan approved, or whether we should require less information. We are also interested in whether any commenters believe a traditional plan approval process, similar to the process in part 48, is needed to ensure that training plans meet minimum standards of quality, and why this may be true.

*New Miner Training*

Under the proposal, no minimum number of hours of training is required for a new miner before he or she begins work under the close supervision of an experienced miner. Instead, the proposal requires instruction in four subject areas before the miner can assume work duties. By not requiring a minimum number of hours of initial training for new miners, the proposal would provide flexibility to tailor training plans to focus on the unique needs of the mine and workforce and to provide the most effective and relevant training for the new miners. At the same time, because specific subject areas would be covered before new miners begin work, the miners would receive training on relevant topics to ensure that they are familiar with the operations and environment at the mine, their job duties, and the hazards they may encounter at the mine site.

We are interested in whether commenters agree with this approach, or whether the final rule should establish a minimum number of hours of training that new miners must receive before beginning work. One possible approach would be to specify a minimum number of hours of initial training that must be provided to miners based on mine size or complexity of operation. For example, a large operation may be required to provide eight hours of training, while a very small operation would be required to provide one hour of training. We are interested in comments on this alternative, particularly on the criteria that might be used in determining how much initial new miner training must be given, such as employment, type of operation, type and amount of

equipment, etc. Commenters who believe that a minimum number of hours of training should be required should also specify what the minimum number of hours should be.

#### *New Task Training*

This proposed rule would require miners to be trained for new tasks and for regularly assignee tasks that have changed. The new task training requirements in the proposal are very performance-oriented, and do not include detailed specifications for this training. However, we are interested in comments on whether the final rule should include more detail and guidance on the elements of an effective new task training program, and what areas should be addressed. We are also interested in comments on whether new task training requirements under the final rule should be modeled after the requirements in part 48, as recommended by some comments at the public meetings.

#### *Training Instructors*

The proposal would not require a formal program for the approval or certification of instructors, or establish rigid minimum qualifications for instructors. Instead, training must be provided by a "competent person," which is defined as a person designated by the operator who has the ability, training, knowledge, or experience to provide training to miners on a particular subject. Under this definition, the competent person must also be able to evaluate the effectiveness of the training.

We are interested in comments on the approach taken in the proposal for instructors, particularly on the fact that the proposal would not require a formal instructor approval or certification program. We are also interested in commenters' views on whether the final rule should require some minimum amount of formal training for instructors, designed to ensure that the instructor has the communication skills needed to provide effective training.

#### *Annual Refresher Training*

Under the proposal, refresher training must include, at a minimum, instruction on changes at the mine that could adversely affect the miner's health or safety. The proposal includes a list of suggested topics that refresher training could cover, but these topics are not mandatory. We are interested in whether the final rule should include more detailed requirements or guidance for refresher training programs. We are also interested in whether there are any other subjects that commenters believe

should be required as part of annual refresher training at all mines, or whether the final rule should remain at performance-oriented as the proposal.

#### *Effective Date and Compliance Deadlines*

We are interested in comments on how much time should be allowed for the mining community to come into compliance with the final rule. Several speakers at the public meetings stated that one year after the date of publication of the final rule would provide a sufficient period of time for affected operations to come into compliance. Several other speakers indicated that six months past the publication date would be adequate.

One possible approach would be phased-in compliance deadlines, where some of the rule's requirements would go into effect at different stages. For example, the requirement that you develop and implement a training plan might become effective six months after the final rule is published, while the requirements for the various types of miner training would take effect one year after publication.

We are seeking comments on whether phased-in deadlines would be useful in facilitating compliance, and what period of time will be needed for full compliance. We understand that there will be a very large number of operations coming into compliance simultaneously and wish to allow a reasonable amount of time for the transition.

#### *Costs and Benefits of the Proposed Rule*

We are interested in comments on all elements (including methodology, assumptions, and data) of our analysis of the costs and benefits of compliance with the proposed rule.

In terms of compliance costs, we specifically request comments on the following issues: (1) The non-compliance estimates used in our preliminary Regulatory Economic Analysis for the proposed rule and whether partial compliance with existing part 48 training requirements would be a more realistic and useful assumption; (2) whether new mines are predominantly opened by current mine owners (who would presumably be able to adopt an approved training plan) and, more generally, whether the cost assumptions for existing mines to develop a training plan are equally applicable to new mines; (3) the assumptions concerning short safety meetings used to derive the estimate of exempt mine operator savings attributable to the proposed rule; and (4) the cost assumptions concerning hazard

training, including, particularly, the number of persons requiring hazard training.

In terms of safety and health benefits, we request comments on (1) our estimates of the number of fatalities likely to be prevented by compliance with the proposed rule; (2) the effect of increased production levels on the number of fatalities and the fatality rate; and (3) what factors, other than training, might make exempt mines more hazardous than nonexempt mines.

We are also interested in comments related to potential economic benefits you might derive from improved miner safety and health resulting from compliance with the rule. For example, during the public meetings, several speakers stated that their companies were able to reduce workers' compensation insurance costs significantly by instituting an effective safety and health training program. We are specifically interested in comments concerning how compliance with proposed part 46 might affect workers' compensation costs at your operations. Other economic benefits from improved miner health and safety we request your comments on include, but are not limited to, an increase in productivity; a reduction in property loss and down time associated with accidents; and a reduction in employee turnover.

### **III. Hearing Procedures**

We will conduct the hearings in an informal manner with a panel of MSHA officials. Although formal rules of evidence or cross examination do not apply, the chair may exercise discretion to ensure the orderly progress of the hearings and may exclude irrelevant or unduly repetitious material and questions.

We will begin each session with an opening statement and will then give members of the public an opportunity to make oral presentations. The hearing panel may ask questions of speakers. Verbatim transcripts of the proceedings will be prepared and made a part of the rulemaking record. Copies of the hearing transcripts will be made available for public review, and will also be posted on our Internet Home Page at <http://www.msha.gov>.

We will also accept written comments and other appropriate information from any interested party, including those who do not make oral presentations. All comments and information submitted will be considered by us in the development of the final rule and included as part of the rulemaking record. To allow for the submission of posthearing comments, the record will remain open until June 16, 1999.

Dated: April 6, 1999.

**Marvin W. Nichols, Jr.,**

*Deputy Assistant Secretary for Mine Safety  
and Health.*

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