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Tuesday  
October 6, 1998

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**Part II**

**Department of Labor**

**Mine Safety and Health Administration**

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**30 CFR Parts 48, 75, and 77  
Experienced Miner and Supervisor  
Training; Final Rule**

**DEPARTMENT OF LABOR****Mine Safety and Health Administration****30 CFR Parts 48, 75, and 77**

RIN: 1219-AB13

**Experienced Miner and Supervisor Training**

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

ACTION: Final rule.

**SUMMARY:** This final rule revises MSHA's training regulations to update and upgrade certain provisions. Specifically, these revisions require essential health and safety training for certain supervisors; eliminate new miner training for experienced miners; and promote flexibility in experienced miner training to meet the specific needs of the miner and the operator. This final rule will enhance safety and health by providing effective training of miners and, thus, reducing accidents, injuries, and illnesses.

**DATES:** This final rule is effective February 3, 1999, except that §§ 48.2(b)(2), 48.22(b)(2), 48.8(c), and 48.28(c) are effective October 6, 1998 and §§ 75.161 and 77.107-1 are effective October 6, 1999.

Submit all comments on the information collection burden by December 7, 1998.

**ADDRESSES:** Submit written comments on the information collection requirements directly to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for MSHA, 725 17th Street NW, Room 10235, Washington, DC 20503; and to MSHA by mail to Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203; by facsimile to MSHA, Office of Standards, Regulations, and Variances at 703-235-5551; or by E-mail to comments@msha.gov. MSHA encourages commenters sending written comments by mail or facsimile to also send a computer disk of the comments.

**FOR FURTHER INFORMATION CONTACT:** Carol J. Jones, Acting Director; MSHA, Office of Standards, Regulations, and Variances; 703-235-1910.

**SUPPLEMENTARY INFORMATION:****I. Rulemaking History**

Section 115 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 825, directs the Secretary of Labor to promulgate regulations

concerning safety and health training programs for miners. Section 115 states that each mine operator must have a training program approved by the Secretary. The legislative history of the Mine Act indicates that Congress intended that miners be trained commensurate with their exposure to mine hazards so that they can effectively deal with those hazards.

On October 13, 1978, MSHA published regulations for the training of miners in 30 CFR part 48 (43 FR 47453) implementing § 115 of the Mine Act. Among other things, the regulations define "miner" and "experienced miner," and they specifically require new miner and newly-employed experienced miner training, task training, and annual refresher training.

On September 24, 1991, MSHA published a proposed rule (56 FR 48376) to revise portions of the existing regulations. The comment period for the proposed rule closed January 24, 1992, and MSHA held two public hearings: July 21, 1992, in Arlington, Virginia; and July 23, 1992, in Denver, Colorado. The record remained open until September 25, 1992, to allow for post-hearing comments.

MSHA received comments from many segments of the mining community. These comments have been reviewed and considered in the development of the final rule. Some commenters, however, raised issues outside the scope of the proposal. The issues addressed in the final rule are limited to those specifically raised in the proposed rule.

**II. General Discussion***Overview*

The Congress recognized, and MSHA's experience confirms, that effective training of miners is important to preventing deaths, injuries, and illnesses in mining. All miners must be trained to recognize and avoid mine hazards and to work safely. Effective training must be complete, preparing miners for the hazards they will face so that they can assist in the prevention of accidents, injuries, and illnesses. Circumstances affecting individual miners differ, however. They have varying levels of mining experience and work in various mining environments. Effective training must take these differences into account.

Training that is suitable for miners without mining experience may not be appropriate for miners with experience. MSHA continues to allow compliance flexibility under the final rule so that mine operators may develop training materials that best meet their particular needs. For example, training should

take into account miners whose extent and type of experience varies, including those transferred from one mine to another mine owned by the same operator, as well as those miners who have not worked in their occupation for a period of time. For this reason, the final rule primarily retains a performance-oriented approach to experienced miner training.

As required in § 101(a)(9) of the Mine Act, the final rule promotes effective training without reducing the protection afforded miners in the following ways. First, it provides that experienced miners, including supervisors, must take training tailored to meet their specific needs. Once a miner is experienced, that miner will not have to take training designed for inexperienced miners. Second, miners who are away from mining for 5 years or more must receive at least 8 hours of experienced miner training. Third, experienced miner training includes four new subjects: prevention of accidents, emergency medical procedures, health, and health and safety aspects of the tasks to be performed in their jobs. Finally, miners returning to work, following an absence of 12 months or less, must be made aware of any major changes in the mine that may adversely affect their safety or health.

*Training Plan Modifications*

To minimize the paperwork burden, assist mine operators with compliance, and focus on the importance of quality training, MSHA will provide assistance and guidance for complying with this regulation. The Agency will issue compliance guidelines to all mine operators further explaining the required modifications to their training plans. MSHA also will include a model training plan addendum with the compliance guidelines. The operator can attach this model addendum to an existing MSHA-approved training plan and, thus, eliminate the need to submit a plan modification to MSHA for approval.

Existing standards require mine operators to post a copy of revisions to the training plan on the mine bulletin board.

**III. Section-By-Section Discussion***Sections 48.2 and 48.22 Definitions Supervisors as Miners*

Like the proposal, the final rule eliminates the training exemption for supervisors who are subject to State certification programs; all supervisors are "miners" for training purposes. The final rule removes the specific reference to supervisors from the definition of

"miner" under existing §§ 48.2(a)(1)(ii) and 48.22(a)(1)(ii).

When the training regulations were promulgated in 1978, MSHA expected that State certification programs would be sufficient for safety training purposes, and that Federal requirements would duplicate the requirement of the states. MSHA experience has shown that State certification programs generally do not focus on the safety and health aspects of mining, particularly those tasks performed by miners, and that accidents involving supervisors usually occur while supervisors are performing mining related tasks. For these reasons, the final rule will supplement the State certification program by emphasizing health and safety issues specific to a particular mine or mining method.

Supervisors direct the work force and, in that role, are responsible for assuring that work is done in a safe and healthful manner. In many instances, supervisors, who may have to visit many work areas at a mine, may encounter more hazards than miners who may be assigned to one area or one piece of equipment. Also, supervisors often personally intervene and perform non-supervisory tasks when interruptions of normal work operations occur or when hazardous situations arise.

Fatalities among underground coal mine supervisors, including State certified supervisors, confirm their exposure to hazards. From 1990 to 1997, there were 35 underground coal supervisor fatalities. This figure represents about 15% of all underground coal fatalities during that period. Though the fatality rate for supervisors has improved in recent years, their accident experience continues to warrant attention. Underground coal supervisors are of particular concern because MSHA estimates that only about 34% of underground coal supervisors receive or are required to receive part 48 training. About 75% of surface coal supervisors and all metal and nonmetal (M/NM) supervisors receive or are required to receive part 48 training.

Supervisors are subjected to many, if not more, of the hazards that non-supervisory miners face and, therefore, need to receive at least the same training. The final rule addresses this issue by requiring that previously exempt State certified supervisors complete part 48 annual refresher training not more than 12 months after the publication date of this final rule in the **Federal Register**. This will provide supervisors the full complement of training that all miners receive, including courses in Electrical Hazards,

Health, Explosives, and Prevention of Accidents. In this way, the final rule assures that supervisors will be effectively trained in all health and safety aspects of their work environment.

Several commenters suggested that the training regulations refer to both "miners" and "supervisors" throughout the provisions to ensure that supervisors are covered by the training requirements. The Agency contends that separate references to both miners and supervisors throughout the rule are not necessary. All miners, including supervisors, need to be effectively trained commensurate with their exposure to mine hazards. Accordingly, the final rule removes the supervisor exemption and, by doing so, the definition of "miner" will include supervisors.

Commenters pointed out that some supervisors are primarily office workers who work at the mine, but are not exposed to mine hazards. These commenters suggested that these supervisors not be considered "miners" and required to complete comprehensive training. One commenter suggested that MSHA add clarifying language to the regulation to exclude supervisors who do not perform miners' tasks and are not regularly exposed to mining hazards. MSHA agrees that these supervisors, like other miners who are not regularly exposed to mining hazards, do not need comprehensive training. Under the final rule, supervisors will be treated like other miners. MSHA does not accept that additional explanatory language is needed, however, because the definitions for "miner" [§§ 48.2(a) and 48.22(a)] distinguish between miners who are required to take comprehensive training from those, including some supervisors, who only need hazard training (§§ 48.11 or 48.31).

On the other hand, MSHA received comments from both industry and labor representatives suggesting that supervisors who are exposed to mine hazards should receive training under part 48 beyond that required for other miners. The comments detailed courses that should be incorporated into a comprehensive training program specifically for supervisors. While these comments extend beyond the scope of the proposal, they raise important issues for future consideration by the Agency.

One commenter pointed out that many operators use their supervisory personnel as trainers to fulfill the requirements of part 48. The commenter was concerned that supervisors who conduct training would be required to take the same training themselves.

Supervisors and miners who are MSHA approved to conduct training have demonstrated knowledge of the subject matter through previous instruction or experience. MSHA, therefore, will credit persons who conduct a training course with having taken that particular course. For example, an MSHA approved instructor who teaches a course on health will be credited with having taken that course.

#### Requirements for Experienced Miner Status

In the existing standards, an "experienced miner" is a person who has received training acceptable to MSHA from an appropriate State agency within the preceding 12 months; or a person who has had at least 12 months experience working in a surface or underground mine during the preceding 36 months; or a person who has received new miner training within the preceding 12 months. If, for example, a miner is laid off for more than 2 years, that miner is no longer considered "experienced" and reverts to new miner status for training purposes. In order to be considered "experienced," the miner must complete new miner training. Consequently, miners who may have significant mining experience must take training designed for persons new to mining. The proposal had addressed this lapse in "experienced" miner status for training purposes by allowing a miner to retain this status for life if the miner completed new miner training and 12 months of mining experience.

Like the proposal, the final rule defines "experienced miner" in §§ 48.2(b) and 48.22(b) to mean a miner who has completed new miner training and has 12 months of mining experience. Once the miner has attained that training and experience, the miner retains "experienced miner" status for life for training purposes. Upon changing employment, the miner is then required to receive training specifically intended for experienced miners.

The final rule allows laid-off miners to retain experienced miner status, thus making them more competitive. Even when miners have not been passed over, the lapse of experienced miner status has stirred some resentment among miners who, by virtue of their mining experience, do not want to be called or treated as "new miners." The final rule eliminates the lapse of the experienced miner status, and strengthens experienced miner training requirements.

MSHA received several comments on the definition of "experienced miner." Some commenters agreed that the combination of training and experience

should qualify a person as an experienced miner.

Other commenters stated that obtaining experienced miner status might be difficult for some independent contractors working on mine property. They pointed out that independent contractors are often hired for their task expertise and that new miner training is not necessary to assure that these contractors are knowledgeable in the health and safety aspects of their tasks.

MSHA's position is that, in addition to task expertise, these independent contractors must have a solid foundation in the health and safety aspects of their mine work environment. MSHA's experience indicates that task expertise alone does not substitute for a familiarity with surrounding safety and health hazards. For example, an electrician who is contracted to work on mine property will be familiar with hazards associated with working around electricity, such as water, grounding, and live wires. The electrician may not be familiar with mine hazards or health and safety procedures, such as the use of personal protective equipment, lockout and tagging procedures, and working in and around operating equipment.

Under the proposal, experienced miner training would have been "given by an operator or state." Commenters said that this provision would be unduly restrictive as to the types of entities that could provide the training. It was never MSHA's intention to restrict who could conduct the training. MSHA considered training provided by the operator through a third party as training "given by" the operator. For clarification, the final rule requires only that the training be MSHA-approved. Thus, a variety of entities can conduct the MSHA-approved training, including private trainers, universities, trade associations, and labor organizations.

Commenters noted that contractors are mobile, performing work for short periods of time at many different job sites in mining and general industry. According to these commenters, such work patterns make it difficult to accumulate a year's mining experience within 12 months of receiving new miner training. They suggested that the definition of an "experienced miner" include only a training requirement. Work experience, however, is critical to the hands-on application of the safe work procedures and practices of each task. Actually doing a task in a safe manner effectively imprints those practices and procedures and reinforces learning.

One commenter suggested that experienced underground miners

should be considered experienced surface miners, and vice versa. MSHA rejected this comment because underground and surface mining present different environments, hazards, and mining equipment. If "experienced" status is to be meaningful, an experienced underground miner must have underground experience and an experienced surface miner must have surface experience.

Similarly, another commenter suggested that either surface or underground training and experience should suffice for independent contractors to gain "experienced" miner status for both locations. Again, MSHA concludes that training specifically geared to those respective environments is both justified and necessary because independent contractors, like other miners, are exposed to hazards that are unique to either surface or underground mining environments.

MSHA acknowledges, however, that maintenance and service contractors often have significant trade experience in work environments similar to surface mines or the surface areas of underground mines. These contractors are not exposed to appreciably different hazards when they are working in similar work environments.

Accordingly, MSHA will allow independent contractors to count their trade experience in work environments with hazards similar to mining toward satisfying the 12-month surface mining experience requirement. For example, a person who has repaired or changed tires for 7 months in an employment setting with exposure to hazards like those found at mine properties, may be credited for the 7 months experience.

One commenter stated that it also may be difficult for some new miners, especially at mines that work intermittently, to gain the 12 months of mining experience within 12 months of receiving new miner training. Another commenter suggested that the rule should allow persons 36 months to attain the 12 months of mining experience. Although the Agency acknowledges the importance of mining experience, it also agrees that gaining experience consecutively or within a restricted time frame may be difficult in some cases. In response to commenters, and to provide flexibility to both miners and operators, the final rule imposes no limit on the amount of time within which the miner has to accumulate the 12 months of experience.

The proposal would have recast the existing grandfather provision for miners employed on October 13, 1978, by adding a 1-year experience

requirement. MSHA received no comment specifically on this part of the proposal. Commenters were concerned, however, that some other miners, who are considered to be experienced miners under the existing rule, would lose that status under this proposed provision because they do not yet have 12 months of mining experience.

MSHA wants a smooth transition under the final rule without a disruption to the mining industry. Accordingly, MSHA will consider all miners who are experienced miners under the existing rule on the effective date of this final rule to be experienced miners for life. This addresses the commenters' concern and incorporates the current grandfather provision without adding requirements.

Under the proposal, MSHA would also have considered supervisors to be experienced miners if they were certified under an MSHA-approved State certification program and were employed as supervisors on the date of publication of this final rule. MSHA received no comment on this issue and the final rule retains this provision. Because supervisors are drawn from the pool of experienced miners, this provision does not reduce protection afforded miners under the existing standards.

#### *Sections 48.5 and 48.25 Training of New Miners*

Under the proposal, an "experienced miner" was a miner who had completed new miner training and had 12 months of mining experience. The proposal did not address what training a miner would need if the miner went to work at another mine before gaining the required 12 months of experience. Upon reviewing the proposal, MSHA was concerned that miners working in different mines before accumulating the required 12 months of mining experience would have to take new miner training each time they began work at a new mine, resulting in unduly repetitive and costly training.

One commenter pointed out that a training and experience requirement that may result in miners, including independent contractors, repeatedly taking new miner training is undesirable and not conducive to effective training. Another commenter suggested that new miner training be good for 36 months.

The final rule addresses this issue in §§ 48.5(d) and 48.25(d). This provision allows miners who have received new miner training in the last 36 months, to take experienced miner training rather than requiring them to retake new miner training. These miners will then continue in the operator's regular

program of training for miners, including task and annual refresher training. This approach minimizes the likelihood of repeating new miner training unnecessarily. MSHA has determined that the final provision reduces the compliance burden on mine operators and provides more effective training to miners, while not reducing the protection under the existing standards.

For example, a person new to mining receives surface new miner training, works 6 months, and leaves the mining industry. Two years after receiving new miner training, the person is hired at a surface mine. Because the person had received new miner training within 36 months, the person will be required to receive experienced miner training rather than new miner training. After an additional 6 months of working as a miner, the miner will have accumulated 12 months of total surface mining experience and, for training purposes, will be considered an experienced surface miner for life.

Alternatively, as another example, if the miner were to receive surface new miner training, work 6 months, and leave the mining industry for 4 years, that miner, upon returning to surface mining, will be required to repeat new miner training. After the miner completes the new miner training and accumulates another 6 months of mining experience, that miner will be considered an experienced surface miner for life. If the miner had accumulated 12 months of mining experience within 36 months of receiving new miner training, as in the previous example, that miner would have been required to receive experienced miner training rather than new miner training.

#### *Sections 48.6 and 48.26 Experienced Miner Training*

Consistent with the proposal, the final rule changes the title of §§ 48.6 and 48.26 from "Training of newly employed experienced miners; minimum courses of instruction" to "Experienced miner training." Similarly, all references to "newly employed experienced miners" are revised to read "experienced miners."

The final rule states that experienced miner training pertains to miners rehired or transferred from one mine owned by the same operator to another, as well as to experienced miners who are newly employed at the mine for the first time. The final rule also requires experienced miner training for experienced underground miners who are working on the surface and are transferred underground, or experienced

surface miners who are working underground and are transferred to the surface.

Miners returning to the mine after an absence of more than 12 months are also required to receive experienced miner training. The duration, not the cause, of the absence necessitates the training. The final rule, therefore, removes the itemization of causes of absences contained in the proposal. This avoids the possibility of miners "falling through the cracks" when they have been absent from the mine for reasons other than those listed. Thus, the absence may be for any reason including, but not limited to, lay off, work stoppage, termination, illness, injury, family care, extended leave, or other work.

#### *Flexible Training*

Experienced miners who are new or returning to a mine need to be apprised of the particular conditions and practices that present new safety and health hazards at that mine. Effective training prepares these miners to work safely by familiarizing them with the mine's environment, providing them with information on the mine's plans and procedures, and assuring that they have skills that are adequate to perform their jobs safely. This is practical, mine-specific training.

To provide flexibility for a variety of training needs, the final rule recognizes the diversity of experience among miners. For example, training geared for a miner who is experienced, but new to the operation, may not be appropriate for a miner who is transferred, from surface to underground or from one mine owned by the operator to another, and may already be knowledgeable about the operator's plans and procedures. The final rule requires the operator to vary the time spent on each subject so as to address the particular needs of the individual miner. It is up to the operator to determine appropriate training. MSHA encourages operators to add additional safety and health subjects based on the specific circumstances and conditions at the mine.

Commenters suggested that MSHA clarify whether the final regulatory language refers to surface or underground miners throughout §§ 48.6 and 48.26. MSHA does not include this suggestion in the final rule. The term "experienced miner" appears in subparts A and B, which apply to underground and surface miners, respectively.

Commenters also suggested that MSHA clarify proposed §§ 48.6(a)(3) and 48.26(a)(3) concerning transferred

miners from underground to surface or surface to underground, to specifically state which type of transferred experienced miner, surface or underground, each section covers. For the same reason, the Agency does not include this suggestion in the final rule. The term "experienced miner" appears in the context of subparts A and B, which clearly apply to underground miners and surface miners, respectively.

Commenters suggested that miners who are transferred from one mine to another owned by the same operator, should not be required to receive all of the experienced miner training. They suggested that only certain subjects be required.

The final rule includes a performance approach to experienced miners training. MSHA intends that this training requirement be flexible so as to meet the needs of different miners, with their varying knowledge and understanding of the mine environment. While a miner transferring from one mine to another owned by the same operator may need less training than another experienced miner newly employed by the operator, all experienced miners must receive at least some training in all of the required subject areas. This is because this type of training acquaints miners with specific conditions, plans, and procedures of a different mine or mine environment.

One commenter stated that experienced miners transferred from the surface area of an underground mine to underground, or vice versa, should not be required to complete all of the requirements of new miner training to be able to transfer. Further, the commenter recommended that these transferring miners should receive, in all cases, a predetermined reduction in the number of hours required in new miner training.

Experienced miner training must not be approached from the standpoint of "one size fits all." MSHA experience indicates that a predetermined reduction of required training based on some miners having prior experience does not account for differences in the miners' experience. Under the final rule, as under existing policy, MSHA will allow miners to receive credit for applicable training previously taken under subpart A to fulfill requirements of subpart B or vice versa. For example, if an experienced underground miner transfers to a surface job, that miner's first aid training can be credited toward the first-aid training required for an inexperienced surface miner. MSHA expects mine operators to assess the training needs of the transferring miner

and to determine any applicable training to credit.

Several commenters objected to the phrase in the proposal that training be "thorough and effective." They maintained that such a requirement was vague, subjective, and could cause enforcement problems. MSHA agrees. The final rule does not include this language. However, MSHA expects mine operators to provide necessary training to ensure that miners have the information they need to work in a safe and healthy environment.

#### Additional Experienced Miner Courses

The existing standards require training in some subjects to acquaint newly employed experienced miners with the environment, operations, and hazards at the mine. Miners with more than 1 year of total mining experience, and who have less than 1 year of mine experience at the mine where the accident occurred, accounted for about 22% of all miner fatalities from 1990 to 1997. During that period of time, these miners accounted for only 5% of the total mining population. This high percentage of accidents indicates that experienced miners new to a mine are not receiving the training they need to work safely.

The final rule strengthens training for experienced miners, requiring training in four additional subjects to increase their ability to work safely, avoid injuries and illness, and respond to emergencies. The added courses are: (1) prevention of accidents, with a review of accidents that have occurred at the mine; (2) the mine's emergency medical arrangements and the location of first-aid equipment and supplies; (3) health, including instruction on the purpose of taking dust and noise measurements, and explaining warning labels and any health control plan in effect at the mine; and (4) the health and safety aspects of the task to which the miner will be assigned.

Regarding the course on prevention of accidents, one commenter stated that a review of all accidents should not be required because training on specific accidents might not be feasible under certain circumstances due to employee confidentiality or pending litigation. The commenter was also concerned that, interpreted broadly, the provision would require mine operators to provide training on every accident that occurs at a mine, regardless of degree of the injury.

While some duplicate wording has been removed, the final rule retains the proposed requirement that a review of general causes of accidents applicable to the mining environment and causes of

specific accidents at the mine be provided. MSHA intends that mine operators' instruct miners on accidents of particular concern at the mine. It is the mine operator's responsibility to determine which accidents should be reviewed as part of the training. This flexibility is important for providing mine operators the latitude to design their own training, tailored to address the specific needs of their unique mining conditions.

Commenters objected to the proposed first-aid instruction requirement and suggested that it be eliminated or changed. Some commenters recommended that first-aid methods be taught according to a national program. Alternatively, some commenters suggested that instruction should focus on making miners aware of the locations of first-aid supplies, rather than requiring training in first-aid methods. Some commenters noted that a review of first aid would be redundant, as it is done in annual refresher training, and that instruction on this subject would impose a burden on many operators to hire an approved first-aid instructor and obtain first-aid teaching equipment.

In response to commenters, the final rule requires that experienced miners be made aware of emergency medical arrangements and locations of first-aid equipment and supplies. Consistent with this change, the Agency has changed the title "First aid" to "Emergency medical procedures." Miners who take this course also must take annual refresher training that includes instruction in first-aid methods. Additionally, some miners and designated supervisors will receive first-aid training under the requirements in 30 CFR parts 56, 57, 75, and 77.

One commenter questioned the need for taking any training related to health measurements, noting that an experienced miner already knows the purpose for taking health measurements. MSHA disagrees. It is important that miners know the health measurements in place at the mine. Miners who move from one mine to another may encounter new and different health issues. Health measurement training also serves to reinforce the importance of appropriate health protection.

Several commenters suggested that instruction on warning labels be included in hazard recognition training rather than training related to health. While understanding warning labels promotes safe handling of materials, frequently the associated hazards have harmful, long-term effects on miners' health. Under the final rule, therefore,

miners must receive training on warning labels as a part of health training.

One commenter suggested that MSHA provide flexibility for the health course requirement. The commenter suggested that MSHA provide language in this section exempting training that does not apply to a particular operation. For example, training on the use of respirators should not be required if the miner would not be required to use respirators. MSHA agrees that training for miners must be relevant for the needs of each miner and, therefore, the final rule adds the language "where applicable" to this requirement.

One commenter noted that, for clarity, the health training requirement should match that of annual refresher training. MSHA agrees, and has reworded the language to be consistent with that in the surface annual refresher training requirements [30 CFR 48.28(b)(8)].

One commenter suggested that the proposed requirement for instruction in the mandatory health and safety aspects of miners' tasks in §§ 48.6(b)(11) and 48.26(b)(11) would duplicate the existing course, "Mandatory health and safety standards" in §§ 48.6(b)(2) and 48.26(b)(2). MSHA concurs to the extent that, in the proposal, both courses included instruction in mandatory health and safety standards. Under the final rule, there is no duplication. The final rule also clarifies that the training required in §§ 48.6(b)(11) and 48.26(b)(11) is not for miners who, because of no task experience within the prior 12 months, are required to take task training under §§ 48.7 and 48.27.

Proposed §§ 48.6(e) and 48.26(e) addressed task training. MSHA agrees with commenters that this provision duplicates existing part 48 regulations, and it is not included in the final rule. The final rule clarifies language in §§ 48.6(b)(11) and 48.26(b)(11), "Health and safety aspects of the tasks to which the experienced miner is assigned," that if a miner receives task training under §§ 48.7 or 48.27, then training in the health and safety aspects of the task is not required under experienced miner training.

Like the proposal, the final rule modifies the language in § 48.26(b)(5), pertaining to instruction in escape and emergency evacuation plans, by adding the words, "in effect at the mine." This change is made to keep the subject matter focused on the plans and procedures at the specific mine. MSHA received no comments on this change.

In response to comments, the final rule also modifies, the language in §§ 48.6(b)(7) and 48.26(b)(7), concerning instruction in hazard recognition, focusing on the recognition and

avoidance of hazards present at a specific mine. Like the proposal, the final rule is performance oriented and does not specify particular topics to cover in this course, so that the mine operator will have the flexibility to address hazardous conditions unique to the mine. MSHA expects mine operators to take a close look at hazards related to mine gases, electricity, explosives, and haulage, where applicable. In identifying these areas the Agency does not intend that they are all inclusive, but rather indicative of hazards at the mine that could potentially cause an accident.

Several commenters responded to proposed §§ 48.6(f) and 48.26(f), which provided that experienced miners returning to work after an absence of up to 12 months must receive training on changes in the mine environment. The final rule revises and redesignates the provisions as §§ 48.6(e) and 48.26(e). The Agency intends that this training be practical awareness training so that returning miners, experienced and inexperienced, may know the changes which could adversely affect their safety and health.

Commenters questioned what changes would trigger this training for miners returning to work. Commenters suggested that only significant or fundamental changes be covered. In response to comments, the final rule clarifies that the changes must be "major." A major change is a change which the operator knows or should know is likely to endanger the safety or health of the miner. To facilitate the effectiveness of training, commenters also suggested that it be given by knowledgeable persons designated by the operator. The Agency has included this suggestion in the final rule. These knowledgeable persons do not have to be approved instructors.

In addition, commenters were concerned about recordkeeping, including documentation and tracking burdens. Consistent with the Paperwork Reduction Act, intended to minimize recordkeeping requirements, the final rule requires no recordkeeping under §§ 48.6(e) and 48.26(e). This will assist operators in providing the practical awareness training in a timely manner.

Commenters were also concerned that MSHA specify what is intended by an "absence" and suggested that a minimum absence time be included, such as 60 days, before this training requirement would be triggered. MSHA intends that this provision address miners who are away from the mine site for any length of time up to 12 months for whatever reason (illness, injury, lay-off, work stoppage, vacation, weekend,

off-shift time, etc.). The Agency has not included a minimum length of absence because changes at the mine site which endanger miners' safety or health can occur quickly; these changes may have nothing to do with the length of the absence. Therefore, the final rule is not conditioned on any minimum time related to an absence.

Another commenter suggested that, instead of an absence of up to 12 months, 6 months should be the maximum absence allowed under this paragraph. The final rule contemplates that returning experienced miners will receive either this training under §§ 48.6(e) or 48.26(e) or receive the full complement of experienced miner training under this section. Because experienced miner training [§§ 48.6 or 48.26] is required for a miner who is absent for more than 12 months, the 12-month maximum is retained in §§ 48.6(e) and 48.26(e) in the final rule.

#### Specific Time Requirements

In the preamble to the proposed rule, MSHA invited comment on whether these regulations should specify time requirements, particularly a minimum number of hours for experienced miner training. Some commenters stated that a time requirement would inhibit the flexibility for training experienced miners. Because the experienced miner training covers varying backgrounds, and individual training needs differ, the final rule does not contain a "one-size-fits-all" time minimum for all experienced miners. As noted above, under the final rule, operators must design the instruction to meet the specific needs of the miners. For training to be meaningful, it must instill knowledge or proficiency in the subject matter. Under the final rule, operators must provide training in necessary subjects in sufficient depth so as to adequately meet the miners' needs.

Other commenters said that there should be a required minimum of 8 hours of training to assure that adequate time is devoted to training. The Agency agrees that a minimum time is warranted in the limited instance of miners returning to mining after an extended absence of many years. Over time, safety skills and knowledge erode, this is further exacerbated by long absences. Mining is becoming increasingly complex and subject to technological innovation. Miners re-entering the field after being away for many years, need to be properly trained. Training must be of sufficient duration to apprise these miners of new developments, as well as re-acquaint them with safe mining practices and procedures. In response to comments,

and to assure that miners who have been away from mining for an extended period receive adequate training, the final rule requires that experienced miners returning after an absence from mining of 5 years or more must receive at least 8 hours of experienced miner training before starting work. MSHA is aware that many operators already provide 8 hours of training for all newly employed experienced miners and commends the industry for this commitment to better, more comprehensive training.

#### *Sections 48.8(c) and 48.28(c) Annual Refresher Training of Supervisors*

In the proposed rule, if training was required by §§ 75.161(a) or 77.107-1 within 30 days of the effective date of the revision, annual refresher training would not begin more than 31 days after the effective date. The Agency was concerned that, as worded, this provision was confusing and unnecessary. Accordingly, §§ 48.8(c) and 48.28(c) is modified in the final rule. Supervisors subject to MSHA approved State certification must receive annual refresher training not more than 12 months after this rule is published.

To accommodate flexibility, reduce burden, and respond to commenters' concerns, the Agency is providing an effective date of 12 months for mine operators to provide annual refresher training for supervisors. Consistent with existing MSHA training policy for miners, the final rule establishes the initial anniversary date for annual refresher training of supervisors, for the month the final rule is published. Therefore, October, 1998 is the initial anniversary month for those supervisors who were not required to receive annual refresher training. These supervisors have 12 months from this date to complete annual refresher training. By allowing 12 months for this training, the Agency allows time for outreach activities for operators and supervisors, and facilitates the inclusion of State certified supervisors into the operator's existing annual refresher training program cycle.

If the mine operator wants to provide annual refresher training to all miners only once a year, then the supervisor would have to receive the training with other miners before 12 months have elapsed. This will establish a new anniversary date for that supervisor.

According to one commenter, the scheduling of annual refresher training for supervisors, who have been trained under the requirements of 30 CFR 75 and 77, should not be limited to the coal sector of the mining industry. This

aspect of the final rule primarily affects coal supervisors, however, because some of these supervisors were previously exempt from part 48 training.

*Sections 75.161 and 77.107-1 Plans for Training Programs*

Like the proposed rule, the final rule revises certain training provisions in 30 CFR parts 75 and 77, for certified persons in underground and surface coal mines, respectively. It removes course requirements for methane measurement and oxygen deficiency testing, roof and rib control, ventilation, and use of self-contained self-rescue devices from § 75.161 and the course requirement for principles of mine rescue from § 77.107-1. These deletions do not reduce protection afforded miners under the existing rule, but only eliminate duplicate provisions and consolidate training requirements in part 48.

Specifically, the final rule removes the training requirement in § 75.161(a) for methane measurement and oxygen deficiency testing, which is covered in § 48.8(b)(10) (Mine gases); in § 75.161(a) for roof and rib control and ventilation plans, which is covered in § 48.8(b)(4) (Roof or ground control and ventilation plans); and in § 75.161(c) for self-contained self-rescue devices, which is covered in § 48.8(b)(8) (Self-rescue devices and respiratory devices). The final rule also revises § 77.107-1 by deleting the reference to principles of mine rescue, as this training is covered under existing § 48.28(b)(3) (Escape and emergency evacuation plans; fire warning and firefighting).

One commenter suggested that MSHA add language to clarify that training received under part 48 would not diminish State and Federal requirements for certified persons. The final rule removes only duplicate training requirements from 30 CFR 75 and 77. Additional training requirements for certified persons, under existing standards in parts 75 and 77, are not covered by part 48 and are unchanged; therefore, additional language to address this point is unnecessary.

One commenter believed that MSHA did not go far enough in removing overlapping topics. This commenter recommended also removing the first-aid training requirements from 30 CFR parts 75 and 77 and leaving the first-aid requirements in 30 CFR part 48 to satisfy all first-aid training needs. In 30 CFR part 48, however, supervisors may never receive a comprehensive first-aid course, because they can receive only a review of basic first-aid and satisfy requirements for part 48 annual

refresher training. The first-aid training requirements in §§ 75.1713 and 77.1705 will assure that there are supervisors on mine property who will receive, at a minimum, 5 hours of refresher first-aid training annually.

As discussed previously, MSHA allows operators 12 months to provide annual refresher training to supervisors under §§ 48.8 and 48.28. This requirement, however, does not eliminate the requirement for annual training of certified and qualified persons under the existing §§ 75.161 and 77.107-1. In removing courses that duplicate those required under part 48 from the training required for certified and qualified persons by parts 75 and 77, the final rule creates the potential for a lapse in vital training. To eliminate this possible lapse in training, the effective date for removal of duplicate training courses from 30 CFR parts 75 and 77 is also 12 months from the date of publication of this final rule.

In effect, this will require an underground supervisor to receive annual refresher training under § 48.8, as well as annual training under existing § 75.161 during the 12 months after the final rule is published. MSHA will, however, allow for crediting during this transition period. As an example, if a supervisor receives annual refresher training under § 48.8 before 12 months has lapsed since the supervisor last received training under § 75.161, and the refresher training duplicates the existing requirements of § 75.161, that supervisor will not have to repeat those duplicate courses when next receiving training under § 75.161. After the effective date of final §§ 75.161 and 77.107-1, which is 12 months from date of publication in the **Federal Register**, (1) all supervisors will have received initial annual refresher training under part 48; (2) the duplicate courses will have been removed from the training required by §§ 75.161 and 77.107-1; and (3) these duplicate courses will be covered in the supervisor's subsequent annual refresher training under part 48.

MSHA also proposed removing § 77.1709, which requires new employees to be trained in safety rules and safe work procedures before they begin work at the mine. These requirements are covered under § 48.25 (Training of new miners), § 48.26 (Experienced miner training), and § 48.27 (New task training). MSHA received no comments on this proposal. The final rule removes existing § 77.1709.

#### IV. Paperwork Reduction Act

The final rule contains collection of information requirements in §§ 48.2/22

and 48.6/26. The information collection requirements associated with part 48 training are approved under OMB Control Number 1219-0070. This final rule will require modification of the information collection budget for part 48. These requirements have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1995 (PRA 95). The respondents and requirements are discussed below with an estimate of the annual information collection burden.

#### Description of Respondents

The respondents are mine operators and individuals who are paid to perform tasks for the mine operator (e.g., instructors). Respondents are not required to respond to any collection of information unless it displays a currently valid OMB control number. MSHA estimates that this information collection requirement affects all (about 20,650) mines and independent contractors. MSHA data for 1997 indicate that there are about 2,560 coal mines, 10,960 metal/nonmetal mines, 3,890 independent contractors at coal mines, and 3,240 independent contractors at metal/nonmetal mines.

#### Description of Information Collection Burden

The estimated incremental information collection burden hours associated with this final rule can be divided into the following three categories: (1) revising the definition of "miner;" (2) improving experienced miner training; and (3) requiring experienced miners, before they return to work following an absence of 12 months or less, to have training on the significant changes in the mine environment that could affect the miners' safety or health.

#### State-Certified Supervisors as "Miners"

The burden hours and associated costs for supervisors to take annual refresher training are included under the costs for changing the definition of "miner" to include all supervisors who previously had been exempt from part 48. The final rule increases the hours associated with this recordkeeping burden.

The current MSHA-approved training form (5000-23) is constructed for ease in keeping a record of the miners' and supervisors' various training courses. MSHA anticipates that the keeping of this record for supervisors requires only the supervisor's name, the date of the training, and checks in the appropriate boxes to indicate the types of training taken. The burden hours for this change

in the final rule are those associated with the actual time spent in filling out the training form. MSHA estimates that this recordkeeping will take about 3 minutes (0.05 hours) each for about 5,900 coal supervisors annually. This burden will be about 300 hours at an associated cost of about \$12,700. This final rule will not impose additional burden hours for the instructor because the supervisor can attend training with other miners.

**Requirements for "Experienced Miner" Status**

This final rule changes the requirements for obtaining experienced miner status for training purposes. It removes the lapse in "experienced miner" status currently required when a miner has been away from mining for over 3 years. There is no additional paperwork associated with this change.

**Training Plan Revisions**

This final rule will require mine operators to modify their training plans. Training Plan revisions are approved under OMB Control Number 1219-0009. MSHA estimates that the burden hours for this recordkeeping will not change because the Agency intends to distribute a training plan addendum which operators can use to modify their training plans without having to submit the change to MSHA for approval.

**Development of Training Course**

The development of training courses is considered an information collection burden under PRA 95. The final rule adds four courses to experienced miner training. Three of these four courses are currently included in "new miner" training and need only slight modification to tailor them to the needs of experienced miners. Based on past experience, MSHA expects that these courses will be developed or modified by management or supervisory personnel. The total estimated one-time, initial information collection burden, for the development of a new course and modifying the existing courses, is about 24,000 hours with an associated cost of about \$918,200. Further, the Agency estimates that any subsequent revisions to the courses would impose only a negligible burden.

**Additional Instructor Time**

MSHA estimates that the four additional required courses will increase the time spent on experienced miner training by an average of 2 additional hours. MSHA estimates that the additional burden hours for training conducted by 8,850 instructors will be about 17,700 hours at an associated cost of \$688,100. MSHA estimates that the incremental expense for supplies and course materials are negligible.

**Significant Changes in the Mine Affecting Safety and Health**

The final rule requires operators to provide instruction about any significant changes in the mine environment that have occurred while the miner was away that could affect the miner's safety or health. For the purpose of this analysis, MSHA estimates that about 32,660 miners who return to work following an absence of 12 months or less, will need such instruction. MSHA estimates further that this instruction will take about 5-6 minutes (0.1 hour) and it will be provided orally by the miner's supervisor. MSHA estimates that this new provision will impose an additional burden on mine operators of about 6500 hours at an associated cost of about \$251,800.

MSHA did not include burden estimates for supervisors instructing groups of miners returning after a change of shift, a holiday, or a weekend. MSHA considers that the supervisor's instruction of miners at the beginning of a new workshift is a normal business practice.

**Summary of Information Collection Burden**

The following chart summarizes MSHA's estimates for compliance with PRA 95.

Provision	No. respondents	Average hours per response	Average No. responses	Average No. responses per respondent	Total hours
<b>Annually Recurring Burden</b>					
§§ 48.2/22(a) .....	2,699	0.05	5,901	2.19	295
§§ 48.5/25(d), 48.6/26(b) .....	20,646	1.09	16,205	0.78	17,693
§§ 48.6/26(e) .....	20,646	0.10	65,329	3.16	6,533
Total .....	20,646	0.28	87,435	4.23	24,521
<b>One-Time Initial Burden</b>					
§§ 48.6/26(b) .....	20,646	1.16	20,646	1	23,981

\*Discrepancies due to rounding.

Submit written comments on the information collection burden by December 7, 1998 to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for MSHA, 725 17th Street NW., Room 10235, Washington, DC 20503.

**V. Executive Order 12866 and Regulatory Flexibility Act**

Executive Order (E.O.) 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations. MSHA has determined that

this rulemaking is not a significant regulatory action.

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's impact on small entities. Under the RFA, MSHA must use the Small Business Administration's (SBA) definition for a small mine of 500 or fewer employees or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA traditionally has considered small mines to be those with fewer than 20

employees. For the purposes of the RFA, MSHA has analyzed the impact of the final rule both on mines with 500 or fewer employees and on those with fewer than 20 employees. MSHA has determined that this final rule will not impose a substantial cost increase on small mines, whether a small mine is defined as fewer than 20 miners or fewer than 500 miners.

MSHA has prepared a Regulatory Economic Analysis (REA) and Regulatory Flexibility Certification Statement to fulfill the requirements of E.O. 12866 and the Regulatory Flexibility Act. This REA is available

from the Agency upon request and is posted on MSHA's Homepage at [www.msha.gov](http://www.msha.gov).

#### *Regulatory Flexibility Certification Statement*

Based on its analysis of costs and benefits, MSHA certifies that this final rule will not impose a significant economic impact on a substantial number of small entities.

#### *Factual Basis for Certification*

MSHA used a quantitative approach in concluding that the final rule does not have a significant economic impact on a substantial number of small entities. This final rule will change the definition of a miner to include State-certified supervisors, change the definition of experienced miner to reflect a miner's past experience, and strengthen training requirements for experienced miners.

#### *Compliance Costs*

The incremental compliance costs of this rule include (1) the annually recurring costs for training previously exempted State-certified supervisors and the added training for experienced miners, and (2) the one-time cost for modifying existing courses and developing a new course for experienced miner training. MSHA estimates that the total initial cost will be \$3.5 million. This includes an annually recurring cost of about \$2.6 million and a one-time cost of about \$0.9 million. MSHA has determined that this final rule will not have a significant economic impact on prices, production, or employment.

In its estimates, MSHA used a wage rate, including non-wage benefits, of \$43 per hour for coal supervisors and \$36 per hour for metal/nonmetal supervisors. MSHA used preliminary 1997 Agency data to determine the number of mines and miners. These estimates include contractors and contractor employees subject to the training requirements. MSHA developed the distribution of supervisors as a percentage of employment based on this Agency data.

#### *Cost Impact on Small Entities*

Using the Agency's traditional definition of a small mine, i.e., one employing fewer than 20 miners, MSHA estimates that the initial cost of this final rule will be about \$1.88 million, which includes an annually recurring cost of \$1.22 million and a one-time cost of \$0.66 million. Using MSHA's traditional definition of a small entity, small operators have an estimated revenue of about \$16.4 billion based on

1997 data. The cost impact on this industry segment is about 0.01% of revenue.

MSHA estimates that the initial cost of the final rule for small mines, using SBA's definition of 500 or fewer employees, will be about \$3.44 million, which includes an annually recurring cost of \$2.52 million and a one-time cost of \$0.92 million. Using SBA's definition of a small entity, small operators have an estimated revenue of about \$54.7 billion based on 1997 data. The cost impact on this industry segment is less than 0.01% of revenue.

The estimated contribution of the mining industry to the gross domestic product is about \$58 billion of which the estimated cost of the final rule is less than 0.01%. When estimated compliance costs are so small in relation to estimated revenues, the Agency believes that it is generally appropriate to conclude that there is no significant impact on a substantial number of small entities. MSHA believes that this analysis provides a reasonable basis for the certification in this case.

The Agency will provide a copy of this final rule and regulatory flexibility certification statement to the SBA Office of Advocacy. In addition, MSHA will mail a copy of the final rule, including the preamble and regulatory flexibility certification statement, to all affected mines and miners' representatives.

#### *Benefits*

The RFA requires that, when developing regulations with major economic impacts, agencies evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small entities. This final rule benefits both small and large mining operators and contractors by providing compliance flexibility, where appropriate, which allows the operator or contractor to be more responsive to the needs of miners. Thus, it enhances safety and health.

This final rule removes the exemption of State-certified supervisors from the definition of "miner" for purposes of part 48 training. This change affects supervisors in coal mines. From 1990 through 1997, 50 coal supervisors (12.9% of all coal fatalities) were killed. Of these, 35 occurred underground. Had the percentage of fatalities been the same for coal supervisors as for non-supervisory coal miners, MSHA projects that 43 coal supervisors (23 of which are underground coal supervisors), rather than 50, would have died during this time period. The average of these higher than expected fatalities is about 0.9 fatalities per year. The higher than expected number of fatalities is 1.5 per

year for underground coal mine supervisors. Based on the greater impact on underground coal supervisors, MSHA estimates that the training required by this rule will help reduce excess supervisory fatalities by about 0.5 fatalities per year, which is slightly more than 50%.

Similarly, the percentage of fatalities between 1990 and 1997 for miners who had more than 1 year of total mining experience, but less than 1 year at the mine where the fatality occurred, is greater than the percentage of fatalities for all other miners. During that time period, these newly-employed experienced miners (NEEMs) incurred 174, or 22%, of the 793 fatalities, even though NEEMs constitute only about 5.3% of the miner population. Had the percentage of fatalities been the same for NEEMs as the percentage of fatalities for other miners, including new miners and supervisors, MSHA projects that 34 NEEMs, rather than 174, would have died during this time period. The average of the 140 higher than expected fatalities is about 17.5 per year.

In its *Preliminary Regulatory Impact Analysis and Regulatory Flexibility Analysis: Proposed Rule on Part 48 Training* (PRIA), August 1991, MSHA had estimated that implementation of the proposed rule would have reduced NEEM fatalities by 20%. The PRIA states:

In evaluating the potential effectiveness of these proposed additional training requirements \* \* \*, MSHA relied upon its experience in observing the effectiveness of training programs and upon a qualitative review of the possible effects on injury rates of the experience and seniority factors. On that basis, therefore, MSHA estimates that about 20 percent of the excess fatalities occurring to newly-employed experienced miners, or about four fatalities per year, could be prevented by compliance with the proposed requirements \* \* \*. (Pages III-20 and III-21)

A commenter stated that attributing a lack of part 48 training to the higher than expected fatality rate among underground coal supervisors or NEEMs is "too simplistic." This commenter contends that most mines already provide supervisors with some or all of the required part 48 training. Commenters submitted alternative explanations as to why supervisors and NEEMs have a fatality rate higher than other categories of miners. One commenter stated that many supervisors often do not use the best judgment in every situation; neither do they use necessary safety equipment in all cases. Further this commenter stated that the higher fatality rate for NEEMs was due, in part, to the fact that some miners

were using techniques learned from previous mining experience which might not be appropriate to handle a different mining condition or situation.

In both the PRIA and this REA, MSHA estimates that about 20% of the supervisors at small underground coal mines, 40% of the supervisors at large underground coal mines, and 75% of the supervisors at surface coal mines receive or conduct part 48 annual refresher training. All supervisors at M/NM mines are required to receive part 48 training. Furthermore, in the PRIA, the Agency acknowledged that training, in and of itself, does not prevent accidents. The Agency contends, however, that training contributes to a reduction in accidents, injuries, illnesses, and fatalities by fostering safe work practices, increasing job skills, and enhancing hazard awareness and prevention. The PRIA stated that compliance with the revised part 48 rule would help prevent about 50% of the excess supervisory fatalities and 20% of the excess NEEM fatalities.

In the absence of any comments or data to refute this estimate, MSHA estimates that compliance with this final rule will help reduce the greater than expected number of supervisory and NEEM fatalities by four fatalities per year (0.5 supervisor and 3.5 NEEM fatalities). MSHA contends that effective training, tailored to the needs of individual miners and supervisors, together with reinforcement of management's policies, procedures, and work practices affecting miners' safety and health, can have a substantial impact on eliminating the unsafe behaviors and work practices described by commenters.

#### **VI. Executive Order 12875 and the Unfunded Mandates Reform Act**

Executive Order (E.O.) 12875, Enhancing the Intergovernmental Partnership, requires executive agencies and departments to reduce unfunded mandates on State, local, and tribal governments; to consult with these governments prior to promulgation of any unfunded mandate; and to develop a process that permits meaningful and timely input by State, local, and tribal governments in the development of regulatory proposals containing a significant unfunded mandate. E.O. 12875 also requires executive agencies and departments to increase flexibility for State, local, and tribal governments to obtain a waiver from Federal statutory or regulatory requirements.

The final rule will impact about 212 sand and gravel or crushed stone operations that are run by State, local, or tribal governments for the

construction and repair of highways and roads. MSHA offered these governments an opportunity to provide meaningful and timely input, at the proposed rule stage, through the promulgation of the proposal for notice and comment. MSHA also mailed a copy of the proposed rule to each mine owned or operated by a State, local, or tribal government. No state or local government commented or requested a waiver of regulatory requirements. MSHA will mail a copy of this final rule to these 212 entities.

The Unfunded Mandates Reform Act was enacted in 1995. While much of the Act is designed to assist the Congress in determining whether its actions will impose costly new mandates on State, local, and tribal governments, the Act also includes requirements to assist Federal agencies to make this same determination with respect to regulatory actions.

MSHA has determined that, for purposes of § 202 of the Unfunded Mandates Reform Act of 1995, this final rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments in the aggregate of more than \$100 million, or increased expenditures by the private sector of more than \$100 million. Moreover, the Agency has determined that for purposes of § 203 of that Act, this final rule does not significantly or uniquely affect these entities.

#### **VII. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks**

In accordance with E.O. 13045, MSHA has evaluated the environmental health and safety effects of the rule on children. The Agency has determined that the final rule will have no effect on children.

#### **VIII. Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments)**

MSHA certifies that the final rule does not impose substantial direct compliance costs on Indian tribal governments.

Further, MSHA provided the public, including Indian tribal governments which operated mines, the opportunity to comment during the proposed rule's comment period. No Indian tribal government applied for a waiver or commented on the proposal.

#### **List of Subjects**

##### *30 CFR Part 48*

Mine safety and health, Reporting and recordkeeping requirements, Training programs.

##### *30 CFR Part 75*

Coal mines, Mine safety and health, Training programs, Underground mining.

##### *30 CFR Part 77*

Coal mines, Mine safety and health, Surface mining, Training programs.

Dated: September 29, 1998.

#### **J. Davitt McAteer,**

*Assistant Secretary for Mine Safety and Health.*

Accordingly, for the reasons set out in the preamble, 30 CFR, chapter 1, is amended as set forth below.

#### **PART 48—[AMENDED]**

1. The authority citation for part 48 is revised to read as follows:

**Authority:** 30 U.S.C. 811, 825.

2. Remove the words "training of newly employed experienced miners" and add, in their place, the words "experienced miner training" in the following places:

- a. § 48.2(a)(1) introductory text
- b. § 48.22(a)(1) introductory text

3. Remove the words "training newly employed experienced miners" and add, in their place, the words "training experienced miners" in the following places:

- a. § 48.3(a) introductory text
- b. § 48.23(a) introductory text

4. Section 48.2 is amended by removing paragraph (a)(1)(ii), redesignating paragraph (a)(1)(iii) as paragraph (a)(1)(ii), and revising paragraphs (a)(2) and (b) to read as follows:

#### **§ 48.2 Definitions.**

For the purposes of this subpart A—

(a) \* \* \*

(2) *Miner* means, for purposes of § 48.11 (Hazard training) of this subpart A, any person working in an underground mine, including any delivery, office, or scientific worker or occasional, short-term maintenance or service worker contracted by the operator, and any student engaged in academic projects involving his or her extended presence at the mine. This definition excludes persons covered under paragraph (a)(1) of this section and subpart C of this part.

(b) *Experienced miner* means:

(1) A miner who has completed MSHA-approved new miner training for underground miners or training acceptable to MSHA from a State agency and who has had at least 12 months of underground mining experience; or

(2) A supervisor who is certified under an MSHA-approved State certification program and who is

employed as an underground supervisor on October 6, 1998; or

(3) An experienced underground miner on February 3, 1999.

\* \* \* \* \*

5. Section 48.5 is amended by revising paragraph (d) to read as follows.

**§ 48.5 Training of new miners; minimum courses of instruction; hours of instruction.**

\* \* \* \* \*

(d) A newly employed miner who has less than 12 months of mining experience and has received the courses and hours of instruction in paragraphs (a) and (b) of this section, within 36 months preceding employment at a mine, does not have to repeat this training. Before the miner starts work, the operator must provide the miner with the experienced miner training in § 48.6(b) of this part and, if applicable, the new task training in § 48.7 of this part. The operator must also provide the miner with annual refresher training and additional new task training, as applicable.

6. Section 48.6 is amended by revising the heading, paragraph (a), the introductory text of paragraph (b), and paragraph (b)(7); by redesignating paragraph (b)(8) as paragraph (b)(12), and paragraph (b)(9) as paragraph (b)(13); and by adding new paragraphs (b)(8), (b)(9), (b)(10), (b)(11), (c), (d), and (e) to read as follows:

**§ 48.6 Experienced miner training.**

(a) Except as provided in paragraph (e), this section applies to experienced miners who are—

- (1) Newly employed by the operator;
- (2) Transferred to the mine;
- (3) Experienced underground miners transferred from surface to underground; or
- (4) Returning to the mine after an absence of more than 12 months.

(b) Experienced miners must complete the training prescribed in this section before beginning work duties. Each experienced miner returning to mining following an absence of 5 years or more, must receive at least 8 hours of training. The training must include the following instruction:

\* \* \* \* \*

(7) *Hazard recognition.* The course must include the recognition and avoidance of hazards present in the mine.

(8) *Prevention of accidents.* The course must include a review of the general causes of accidents applicable to the mine environment, causes of specific accidents at the mine, and instruction in accident prevention in the work environment.

(9) *Emergency medical procedures.* The course must include instruction on the mine's emergency medical arrangements and the location of the mine's first aid equipment and supplies.

(10) *Health.* The course must include instruction on the purpose of taking dust, noise, and other health measurements, where applicable; must review the health provisions of the Act; and must explain warning labels and any health control plan in effect at the mine.

(11) *Health and safety aspects of the tasks to which the experienced miner is assigned.* The course must include instruction in the health and safety aspects of the tasks assigned and the safe work procedures of such tasks. Experienced miners who must complete new task training under § 48.7 of this part do not need to take training under this paragraph.

\* \* \* \* \*

(c) The operator may include instruction on additional safety and health subjects based on circumstances and conditions at the mine.

(d) The training time spent on individual subjects must vary depending upon the training needs of the miners.

(e) Any miner returning to the same mine, following an absence of 12 months or less, must receive training on any major changes to the mine environment that have occurred during the miner's absence and that could adversely affect the miner's health or safety.

(1) A person designated by the operator who is knowledgeable of these changes must conduct the training in this paragraph. An MSHA approved instructor is not required to conduct the training outlined in this paragraph.

(2) No record of this training is required.

(3) The miner must also complete annual refresher training as required in § 48.8, if the miner missed taking that training during the absence.

7. Section 48.8 is amended by revising paragraph (c) to read as follows:

**§ 48.8 Annual refresher training of miners; minimum courses of instruction; hours of instruction.**

\* \* \* \* \*

(c) All coal supervisors who are subject to § 75.161(a) of this chapter must receive annual refresher training required by this section within 12 months of October, 1998.

\* \* \* \* \*

8. Section 48.22 is amended by removing paragraph (a)(1)(ii), redesignating paragraph (a)(1)(iii) as paragraph (a)(1)(ii), and revising

paragraphs (a)(2) and (b) to read as follows:

**§ 48.22 Definitions.**

For the purposes of this subpart B—

(2) *Miner* means, for purposes of § 48.31 (Hazard training) of this subpart B, any person working in a surface mine, including any delivery, office, or scientific worker or occasional, short-term maintenance or service worker contracted by the operator, and any student engaged in academic projects involving his or her extended presence at the mine. This definition excludes persons covered under paragraph (a)(1) of this section and subpart C of this part.

(1) *Experienced miner* means: (1) A miner who has completed MSHA-approved new miner training for surface miners or training acceptable to MSHA from a State agency and who has had at least 12 months of surface mining experience; or

(2) A supervisor who is certified under an MSHA-approved State certification program and who is employed as a surface supervisor on October 6, 1998; or

(3) An experienced surface miner on February 3, 1999.

\* \* \* \* \*

9. Section 48.25 is amended by revising paragraph (d) to read as follows.

**§ 48.25 Training of new miners; minimum courses of instruction; hours of instruction.**

\* \* \* \* \*

(d) A newly employed miner who has less than 12 months of mining experience and has received the courses and hours of instruction in paragraphs (a) and (b) of this section, within 36 months preceding employment at a mine, does not have to repeat this training. Before the miner starts work, the operator must provide the miner with the experienced miner training in § 48.26(b) of this part and, if applicable, the new task training in § 48.27 of this part. The operator must also provide the miner with annual refresher training and additional new task training, as applicable.

10. Section 48.26 is amended by revising the heading, paragraph (a), the introductory text of paragraph (b), paragraph (b)(5), and paragraph (b)(7); by redesignating paragraph (b)(8) as paragraph (b)(12); and by adding new paragraphs (b)(8), (b)(9), (b)(10), (b)(11), (c), (d), and (e) to read as follows:

**§ 48.26 Experienced miner training.**

(a) Except as provided in paragraph (e), this section applies to experienced miners who are—

(1) Newly employed by the operator;  
 (2) Transferred to the mine;  
 (3) Experienced surface miners transferred from underground to surface; or

(4) Returning to the mine after an absence of more than 12 months.

(b) Experienced miners must complete the training prescribed in this section before beginning work duties. Each experienced miner returning to mining following an absence of 5 years or more, must receive at least 8 hours of training. The training must include the following instruction:

\* \* \* \* \*

(5) *Escape and emergency evacuation plans; firewarning and firefighting.* The course must include a review of the mine escape system and the escape and emergency evacuation plans in effect at the mine, and instruction in the firewarning signals and firefighting procedures in effect at the mine.

\* \* \* \* \*

(7) *Hazard recognition.* The course must include the recognition and avoidance of hazards present in the mine.

(8) *Prevention of accidents.* The course must include a review of the general causes of accidents applicable to the mine environment, causes of specific accidents at the mine, and instruction in accident prevention in the work environment.

(9) *Emergency medical procedures.* The course must include instruction on the mine's emergency medical arrangements and the location of the mine's first aid equipment and supplies.

(10) *Health.* The course must include instruction on the purpose of taking dust, noise, and other health measurements, where applicable; must review the health provisions of the Act; and must explain warning labels and any health control plan in effect at the mine.

(11) *Health and safety aspects of the tasks to which the experienced miner is assigned.* The course must include instruction in the health and safety aspects of the tasks assigned and the

safe work procedures of such tasks. Experienced miners who must complete new task training under § 48.27 of this part do not need to take training under this paragraph.

\* \* \* \* \*

(c) The operator may include instruction in additional safety and health subjects based on circumstances and conditions at the mine.

(d) The training time spent on individual subjects must vary depending upon the training needs of the miners.

(e) Any miner returning to the same mine, following an absence of 12 months or less, must receive training on any major changes to the mine environment that have occurred during the miner's absence and that could adversely affect the miner's health or safety.

(1) A person designated by the operator who is knowledgeable of these changes must conduct the training in this paragraph. An MSHA approved instructor is not required to conduct the training outlined in this paragraph.

(2) No record of this training is required.

(3) The miner must complete annual refresher training as required in § 48.28, if the miner missed taking that training during the absence.

11. Section 48.28 is amended by revising paragraph (c) to read as follows:

**§ 48.28 Annual refresher training of miners; minimum courses of instruction; hours of instruction.**

\* \* \* \* \*

(c) All coal supervisors who are subject to § 77.107-1 of this chapter must receive annual refresher training required by this section within 12 months of October, 1998.

\* \* \* \* \*

**PART 75—[AMENDED]**

12. The authority citation for part 75 continues to read as follows:

**Authority:** 30 U.S.C. 811.

13. Section 75.161 is revised to read as follows:

**§ 75.161 Plans for training programs.**

Each operator must submit to the district manager, of the Coal Mine Safety and Health District in which the mine is located, a program or plan setting forth what, when, how, and where the operator will train and retrain persons whose work assignments require that they be certified or qualified. The program must provide—

(a) For certified persons, annual training courses in first aid, principles of mine rescue, and the provisions of this part 75; and

(b) For qualified persons, annual courses in performance of the task which they perform as qualified persons.

**PART 77—[AMENDED]**

14. The authority citation for part 77 continues to read as follows:

**Authority:** 30 U.S.C. 811, 957, 961.

15. Section 77.107-1 is revised to read as follows:

**§ 77.107-1 Plans for training programs.**

Each operator must submit to the district manager, of the Coal Mine Safety and Health District in which the mine is located, a program or plan setting forth what, when, how, and where the operator will train and retrain persons whose work assignments require that they be certified or qualified. The program must provide—

(a) For certified persons, annual training courses in the tasks and duties which they perform as certified persons, first aid, and the provisions of this part 77; and

(b) For qualified persons, annual courses in performance of the tasks which they perform as qualified persons.

**§ 77.1709 [Removed]**

16. Section 77.1709 is removed.

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