

# **MSHA Handbook Series**

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Mine Safety and Health Administration  
Mine Safety and Health Enforcement

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Citation and Order Writing Handbook

## **PREFACE**

This handbook sets forth the procedures for inspection personnel to follow when writing and issuing citations and orders for health, safety, training, and documentation violations at coal, metal, and nonmetal mines. It supersedes all previously issued instructions related to this subject except compliance-related instructions in the Mine Safety and Health Administration (MSHA) "Program Policy Manual." The Administrator for Mine Safety and Health Enforcement must authorize changes to this handbook.

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## **DISCLAIMER**

The citation and order examples included in this handbook might not exactly duplicate the actual forms. Citations and orders issued for violations of the Federal Mine Safety and Health Act of 1977, 30 United States Code (U.S.C.) §§ 801-966, as amended by the Mine Improvement and New Emergency Response Act of 2006, or other standards or regulations must depict gravity and negligence determinations reflective of circumstances present at the time of issuance.

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## **INTRODUCTION**

### **I. Authority**

The Federal Mine Safety and Health Act of 1977 (Mine Act or the Act), 30 U.S.C. §§ 801-966, as amended by the Mine Improvement and New Emergency Response Act of 2006 (MINER Act), directs an Authorized Representative (AR) of the Secretary of Labor (Secretary) to issue citations and orders when the AR believes that a mine operator violated the Mine Act or any mandatory health or safety standard, rule, order, or regulation promulgated pursuant to the Mine Act. The Mine Act also authorizes an AR to issue an order of withdrawal when an imminent danger condition exists. Sections 103, 104, and 107 of the Mine Act describe in detail the authority for issuing these citations and orders.

### **II. Purpose**

This handbook provides guidance for all enforcement personnel in:

- Issuing, extending, modifying, vacating, and terminating citations and orders of withdrawal;
- Describing the conditions or practices constituting a violation or imminent danger;
- Writing a clear justification for extensions and modifications of citations and orders of withdrawal;
- Describing adequately the area or equipment affected by the citations or orders of withdrawal; and
- Evaluating adequately the degree of gravity and negligence of the violation.

All enforcement personnel should use the procedures, scenarios, and examples in this handbook, except for safeguards, which the AR can only issue at underground coal mines.

### **III. Responsibility**

If, upon inspection or investigation, an AR believes that a mine operator has violated the Mine Act or any mandatory health or safety standard, rule, order, or regulation promulgated pursuant to the Mine Act, the AR must issue a citation or order of withdrawal to that mine operator. Each citation or order of withdrawal must be in writing and shall specifically describe the nature of the violation, including a reference to the provision of the Mine Act, standard, rule, regulation, or order the AR alleges the mine operator violated. In addition, each citation must set a reasonable time for abating the violation.

## CHAPTER 1 – GUIDANCE FOR COMPLETING THE MINE CITATION AND ORDER OF WITHDRAWAL (ORDER) FORM

If an AR believes that a mine operator subject to the Mine Act has violated the Act, or any mandatory health or safety standard, rule, order, or regulation promulgated in accordance with the Act, the AR must promptly issue a citation or order of withdrawal to the operator.

This chapter provides guidance for completing MSHA Forms 7000-3, Mine Citation/Order, and 7000-3a, Mine Citation/Order Continuation.

### Form 7000-3 Section I - Violation Data Blocks

This section describes the Mine Citation/Order Form 7000-3's violation data blocks in the Inspection Application System (IAS). If an AR issues a citation through IAS, it will use the data to generate the citation. IAS will populate some of the mine-specific blocks based on the mine profile selected.

#### CAUTION

Unless issuing one of the four enforcement action types that requires including a full name(s) in the citation or order (§ 107(a) Imminent Danger Order, § 104(g) Training Order of Withdrawal, § 104(a) Denial of Entry series, and § 110(g) Notice for Smoking), do not use names in the narrative portion of the citation or order; use nouns of direct address (e.g., Mine Foreman, Section Foreman, Truck Driver).
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1. **Issue Date.** Enter the date using numbers to indicate <month/day/year>.
2. **Issue Time.** Enter the time using a 24-hour clock format.
3. **Citation/Order Number.** IAS will provide the number.
4. **Served To.** Enter the full name and job title of the person receiving the form.
5. **Operator.** Enter the name of the mine's operator.
6. **Mine Name.** Enter the name of the specific mine.
7. **Mine ID (Contractor).** Enter the MSHA mine identification (ID) number and provide the contractor's MSHA ID number, if applicable.
8. **Condition or Practice.** Describe in detail the condition(s) or practice(s) that supports the cited violation or imminent danger. Use the Standard, Hazard, Exposure, Injury, and Negligence (SHEIN) acronym as detailed below, to help organize the narrative and prompt inclusion of the necessary information. If

the space allowed is insufficient, check the "Continuation" block in the lower right-hand corner of Item 8, and then use a Mine Citation/Order Continuation Form 7000-3a in IAS.

## **SHEIN**

When describing situations, violative conditions, workplaces, and other issues it can be useful and helpful to apply a uniform, structured method of composing a narrative. SHEIN provides that method.

Document information and write narratives using the SHEIN acronym. Using the acronym will help both to organize the narrative and ensure the inclusion of necessary content. Additionally, it will help address each of the five elements necessary to support a violation of a mandatory health and safety standard. To properly document the condition or practice in the body of the citation, provide the following:

- **Standard.** Describe the condition or practice that violated a mandatory health and safety standard. Include where the violation occurred, or any equipment involved.
- **Hazard.** Describe the hazard that reasonably caused or contributed to a miner's injury or illness.
- **Exposure.** Describe the miners' exposure to a hazard, the number exposed, and the time span of the exposure.
- **Injury.** Explain the type and severity of injury that could reasonably be expected from the hazard.
- **Negligence.** Define the extensive or obvious nature of the violation and how long it existed. Determine through observation and records who was, or should have been aware, and the degree of risk to miners.

First, incorporate some of the language directly from the violated standard or section of the Mine Act into the beginning of the narrative. For example, when citing 30 Code of Federal Regulations (C.F.R.) § 56.14112(b) begin the initial description of the "condition or practice" the operator violated with:

"The tail pulley guard was not kept securely in place."

Then add the location of the violative condition or practice and describe the equipment or area. For example, enhance the initial description from above with the specific improperly guarded machine and its location so that it states the following:

“The tail pulley guard on the number two conveyor located in the loadout area was not kept securely in place.”

If and where applicable, incorporate measurements, observations, or the size of an area to which the condition or practice applies or covers in the body of the citation. Describe how the condition or practice could result in an injury or illness. For example:

“The tail pulley guard on the number two conveyor located in the loadout area was not kept securely in place. The guard is missing three of the five mounting nuts, which allows it to gap open five inches thereby exposing miners to entanglement-type injuries. An area maintenance miner greases the tail pulley weekly.”

- 8a. Written Notice (Section 103(g) of the Mine Act).** (Coal Mines Only)  
Check this block if issuing an enforcement action under an E03 Hazardous Complaint event. Issue enforcement actions for other violations that do not address the allegations under a different event, such as E01 or E16.

## **9. Violation.**

- 9A. Health/Safety/Other.** (Coal Mines Only) If Health and Safety both apply, click the “Both” block in IAS. If Health and Safety do not both apply, only click one block: Health, Safety, or Other.

**Note:** The Enforcement area is prohibited for §§ 103(j), 103(k), 104(e)(1), 104(e)(2), and 107(a) in IAS.

- 9B. Section of Act.** If applicable, enter the violated section of the Act.
- 9C. Part/Section of Title 30 CFR.** If applicable, enter the violated part or section of Title 30 C.F.R.

## **Form 7000-3 Section II - Inspector’s Evaluation**

- 10. Gravity.** Gravity is an evaluation of the seriousness of the violation using the three criteria listed in 30 C.F.R. § 100.3(e): likelihood, severity, and persons potentially affected.

When evaluating gravity, first decide what injury or illness the standard tries to prevent: fall, crushing, struck-by, caught-by, electrocution, amputation, respiratory damage, etc. Based on facts, consider that same injury or illness when evaluating each of the gravity factors listed. The discussion below provides examples to help select the relevant option in IAS.

**10A. Injury or Illness (has) (is).** Check the appropriate block to indicate the likelihood (No Likelihood, Unlikely, Reasonably Likely, Highly Likely, or Occurred) of an injury or illness occurring. Factors affecting the likelihood of an injury or illness include the duration and frequency of the exposure under continued normal mining practices, the number of miners exposed to the condition or practice, the location and extensiveness of the condition or practice, and the length of time the condition or practice has existed.

**No Likelihood.** Select this box for violations of laws or regulations that have no effect on injury or illness.

**Note:** Always select “No Likelihood” when citing a violation of a law or regulation that is not a mandatory health or safety standard such as 30 C.F.R. § 50.20 for failing to submit accident reports.

**Unlikely.** Select this box for violations of mandatory standards when an injury or illness is not reasonably likely to occur. “Unlikely” would include violations where normal mining operations probably would not create the circumstances that would lead to an injury or illness-causing event.

**Example:** A mine operator failed to provide electrically nonconductive material at a switchgear on the surface. If the switchgear is in good condition, it is “unlikely” that the miner using it would encounter energized power.

**Reasonably Likely.** Select this box for violations of mandatory standards when the injury or illness is reasonably likely to occur. “Reasonably Likely” would include violations where normal mining operations would be expected to create the circumstances leading to an injury or illness-causing event.

**Example:** A regularly handled power cable in an active work area has an inadequately insulated splice with bare conductors, exposing miners to electrical hazards. Electrocution is “reasonably likely.”

**Highly Likely.** Select this box for violations of mandatory standards when the injury or illness is highly likely to occur, such as when the circumstances likely to cause an injury or illness-causing event already exist.

**Example:** A miner who is not properly tied off with a safety belt or line is working on an inclined and slick elevated surface. In this circumstance, the miner is “highly likely” to slip and receive fall-related injuries.

**Occurred.** Select this box only when an injury or illness has happened.

### **No Occurrence but Circumstances Exist**

**Example:** A recent roof fall occurred along a travel way. It is clear the roof was not adequately supported or scaled. Based on the traffic along the travel way and other factors, the inspector could evaluate the likelihood of injury as “Highly Likely,” “Reasonably Likely,” or “Unlikely.” The inspector should not evaluate the likelihood as “Occurred” because the roof fall injured no one.

### **Injury Less Severe Than Expected**

**Example:** A miner became trapped in a bin while trying to unplug it, an incident that usually ends in a fatality. However, after an hour-long rescue, the miner emerged with only minor injuries. Evaluate this type of incident based on the expected (fatality) rather than the actual (minor injuries) results. Accordingly, if there was a violation that directly related to the entrapment, evaluate the violation as at least “Reasonably Likely” and “Fatal” rather than “Occurred” and “No Lost Workdays.”

### **Injury as Severe as Expected**

**Example:** A miner was not using fall protection and fell from an elevated platform, suffering a fractured tibia and fibula, sprained wrist, and multiple contusions. The injuries align with expectations. Since the injury or illness happened and the severity was equal to or more than expected, the severity of the injury or illness selected on Item 10B in IAS should match the injury or illness that occurred.

### **Injury More Severe Than Expected**

**Example:** A small rock struck a miner on the head. The miner later died from the injury. Evaluate this type of violation based on the actual (fatal) rather than the expected (minor injury) result. If there was a violation that directly related to the miner’s injury, evaluate that violation as “Occurred” and “Fatal.”

**10B. Injury or Illness could reasonably be expected to be.** Evaluate the expected severity of the injury or illness and check the appropriate box (No Lost Workdays, Lost Workdays or Restricted Duty, Permanently Disabling, or Fatal) based on the facts available. The inspector should document the facts and the reasoning used to determine the type of injury or illness that resulted or that would reasonably be expected to result.

**Note:** This determination is independent of the likelihood assessment.

**No Lost Workdays.** Select this box when the expected injury or illness would not cause the affected miner(s) to miss one or more scheduled workday(s) or to be placed on restricted duty, excluding the day of injury or onset of illness.

**Note:** Always select this box when citing a violation of a law or regulation that is not a mandatory health or safety standard.

**Example:** The operator failed to notify MSHA of a change to the operator on the legal identity. Because this violation would not result in an injury and does not violate a mandatory health or safety standard, select “No Lost Workdays” in IAS.

**Lost Workdays or Restricted Duty.** Select this box when the expected injury or illness would cause the injured or ill miner to lose one full day of work or more after the day of the injury or illness, or would cause one full day or more of restricted duty.

**Example:** The operator failed to maintain a walkway free from debris or other tripping hazards. The walkway is not elevated, and there are no other hazards present that could contribute to an injury more severe than strains, sprains, or abrasions. The inspector would select “Lost Workdays or Restricted Duty” because, after the day of the injury, a strain or sprain would probably require at least restricted duty for several days.

**Permanently Disabling.** Select this box when the expected injury or illness would result in the total or partial loss of the use of any member or function of the body.

**Example:** A silica overexposure causes silicosis. Silicosis is “permanently disabling.”

**Fatal.** Select this box when the expected injury or illness has caused death, would result in death, or has a reasonable potential to cause death.

**Example:** A miner is working under a large, raised component without it being blocked or mechanically secured. If this component fell while the miner was underneath, it would result in “fatal” crushing injuries.

**Example:** A haul road located at the top edge of a 300-foot tall highwall does not have a berm or guardrail. The haul road is accessible but is rarely used; there are no visible tire tracks. There is no operational or maintenance need to travel the haul road. Falling

from the haul road would almost certainly result in “fatal” injuries.

- 10C. Significant and Substantial (S&S).** Select “Yes” or “No” based on whether the particular facts surrounding the violation indicate that there is a reasonable likelihood the violation contributed to a hazard that will result in a reasonably serious injury or illness.

Inspectors should remember that only a violation of a “mandatory health or safety standard” can be designated “S&S.” The mandatory standards include 30 C.F.R. § 50.10 and Parts 46, 47, 48, 49, 56, 57, 58, 62, 70, 71, 72, 75, 77, and 90.

**Note:** Citations designated as S&S require substantially more details in the description, particularly regarding the expected injury. Use SHEIN to ensure a thorough Item 8 narrative that addresses all four Mathies Test factors (see below).

### **Mathies Test**

In 1984, the Federal Mine Safety and Health Review Commission defined a four-part test for S&S. It is the inspector’s responsibility to provide facts to support each of these factors. Under the “Mathies test,” the Secretary must prove:

1. The underlying violation of a mandatory standard;
2. A discrete safety hazard – i.e., a measure of danger to safety – contributed to by the violation;
3. A reasonable likelihood that the hazard contributed to will result in an injury; and
4. A reasonable likelihood that the injury in question will be of a reasonably serious nature.

When evaluating the cited conditions or practices and determining the reasonable likelihood of injury, a key consideration is the relevant time frame. Include both the time before citing the violation and the time that the violation would have existed if normal mining operations continued.

If no miners were exposed to the hazard at the time of the violation, an inspector may still evaluate the violation as “reasonably likely.” If a miner was exposed to the hazard before issuing the citation or if it is reasonably likely that a miner would be exposed to the hazard if normal mining operations were allowed to continue, then a designation of “reasonably likely” is appropriate and the inspector can allege a finding of S&S.

When evaluating “reasonably likely”:

- The occurrence of an injury or illness does not have to be more

probable than not for the likelihood to be designated as reasonably likely.

- Consider mine-specific conditions as well as the history of injury and illness related to this hazard throughout the industry.
- Do not consider redundant features that provide an added measure of safety. These redundant measures cannot be used in lieu of or replacement for the condition or practice cited.

### **S&S Exclusions**

Violations of requirements in 30 C.F.R. Parts 40, 41, 43, 44, 45, or 50 (except 30 C.F.R. § 50.10) cannot be designated as “S&S” because they are regulations, not mandatory health and safety standards. For these violations, select the following:

- **Item 10A:** “No Likelihood.”
- **Item 10B:** “No Lost Workdays.”
- **Item 10C:** “No.”
- **Item 10D:** “000.”

Other than Titles II and III, violations of Mine Act sections without an accompanying mandatory health or safety standard cannot be S&S. For these violations, enter the following into Item 8’s narrative:

“The condition has been designated as “non-significant and substantial” because the conduct violated a provision of the Mine Act other than a mandatory safety or health standard.”

### **Correct S&S Evaluations**

**Example:** Violation of 30 C.F.R. §§ 56/57.14107 (Moving Machine Parts) or § 77.400 (Mechanical Equipment Guards). Miners working next to the stacking conveyor while it was running were reasonably likely to become caught on the #2 self-cleaning tail pulley’s unguarded moving machine parts and exposed to potential injury.

**Evaluation:** Reasonably Likely; Permanently Disabling; “S&S” - Yes

**Example:** Violation of 30 C.F.R. §§ 56/57.14107 (Moving Machine Parts) or § 77.400 (Mechanical Equipment Guards). The mine operator failed to provide a guard on the stacking conveyor’s #2 self-cleaning tail pulley. However, miners did not work in or travel through the area on any shift while the machinery was running. The conveyor was turned off and locked out during maintenance activities.

**Evaluation:** Unlikely; Permanently Disabling; "S&S" - No

**Example:** Violation of 30 C.F.R. §§ 56/57.14107 (Moving Machine Parts) or § 77.400 (Mechanical Equipment Guards). The mine operator failed to provide a guard on the #4 self-cleaning tail pulley next to the walkway. No one was in the area and the tail pulley was not running during the inspection. On the previous shift, miners had been in the area while the unguarded equipment was operating. The tail pulley was scheduled to operate as part of night shift operations later today. Miners travel the walkway next to the energized tail pulley during the night shift.

**Evaluation:** Reasonably Likely; Permanently Disabling; "S&S" - Yes

**10D. Number of Persons Affected.** Enter the number of persons affected if the injury or illness occurred or were to occur.

#### **Affected Verses Exposed**

**Affected:** Influenced in a harmful way; impaired, harmed. (Actually hurt, injured, or ill.)

**Exposed:** Vulnerable; open to danger. (Could have been hurt, injured, or ill but was not.)

It is important to distinguish between the "Number of Persons Affected" by a cited condition or practice and the number of persons "exposed" to the condition or practice. The number "affected" is how many people would be harmed should the expected injury or illness occurs. While the number "exposed" does not appear on the Mine/Citation Order Form 7000-3, the inspector can use it to help determine the likelihood that an event will cause an injury or illness.

#### **Considerations:**

- How many people could the observed condition harm?
- Based on the evaluation made on the gravity section and the associated hazard, what type of injury or illness could result from the observed condition?
- What is the likelihood that the observed condition could affect at least one person (or more)? While in most cases, this is an easy decision, some situations will need careful evaluation to determine the correct number of people affected. The inspector will require knowledge of the mine and its general history, and the ability to use

sound reasoning to connect several different factors.

- If the condition occurred, how many people would sustain damage or injury?

**Example:** An inspector finds that the hoist elevator could fail because the mine operator failed to maintain one of the safety devices. The hoist normally holds five miners when it is being lowered into the mine. Although it would be reasonable to evaluate the number exposed as either five miners or the total number of miners who travel in the hoist, per shift, each day, a hoist failure would affect only the five miners inside at the time of the incident.

**Solution:** The “number of persons affected” would be five.

**11. Negligence.** When determining negligence, consider all types of mitigation and use judgment. Document in detail in the inspection notes all reasoning for deciding on a specific degree of negligence.

The Mine Act holds a mine operator to a high standard of care. A mine operator must be alert for conditions and practices in the mine that affect miners’ safety or health and take steps necessary to correct or prevent hazardous conditions or practices. An operator’s failure to exercise a high standard of care constitutes negligence.

**Negligence** is conduct, either by commission (a command or instruction) or omission (failure to address) that falls below a standard of care established by the Mine Act to protect miners against the risks of harm.

Title 30 C.F.R. § 100.3(d) defines the degrees of negligence as follows:

**No Negligence (None).** The operator exercised diligence and could not have known of the violative condition or practice.

**Low Negligence.** The operator knew or should have known of the violative condition or practice, but there are considerable mitigating circumstances such as reasonable efforts to prevent or correct hazardous conditions or practices before the inspector observed the conditions or practices.

**Note:** Post-citation actions taken by the operator, such as withdrawing equipment and personnel and/or immediately correcting the violation, should not alter the negligence evaluation.

Mitigating circumstances can include:

- Minimizing or eliminating access

- Ordering parts (confirm delivery)
- Adding temporary controls (e.g., posting “out of service” signs)
- Adding barricades or other protective measures
- Having no notice or violation history
- Providing or maintaining engineering control systems
- Providing appropriate personal protective equipment (PPE)
- Providing specific training

**Moderate Negligence.** The operator knew or should have known of the violative condition or practice, but there are mitigating circumstances such as:

- Reason to know
- Having some notice or violation history
- Noted or reported
- Providing or maintaining engineering control systems
- Providing appropriate PPE
- Providing specific training

**High Negligence.** The operator knew or should have known of the violative condition or practice, and there are no mitigating circumstances.

Considerations:

- Operator knowledge – who and how did the operator know (documented in notes)
- Condition is obvious and extensive
- Extensive notice or violation history
- Failure to take safety precautions
- Indifference to a known violation
- Who and how did they know (documented in field notes)

**Reckless Disregard.** The operator displayed conduct which demonstrated the complete absence of care. Consider whether the operator was fully aware of the violative condition and made **NO** effort to protect miners from unsafe conditions.

**Unwarrantable failure** involves aggravated conduct that constitutes more than ordinary negligence.

When citing a violation with “high” negligence, an inspector must evaluate whether aggravated conduct exists to determine if the violation is also an “unwarrantable failure” to comply.

Prior to issuance, an inspector should evaluate citations or orders with possible “high” or “reckless disregard” negligence for aggravated conduct. Factors that may indicate aggravated conduct include but are not limited to:

- The violative condition or practice posed a high degree of danger to miners, warranting the operator's increased attention to prevent or correct the hazards.
- The violative condition or practice was obvious or extensive.
- The violative condition or practice had existed for a period of time.
- The mine or contractor received repeated similar violations in the recent past.
- The operator's agent or contractor's agent had conducted an examination, been in the area, or was aware of the existence of the condition.
- The operator knew or had reason to know the action(s) violated a mandatory standard.
- The violative condition or practice had been reported to the operator or contractor who failed to correct or adequately address the problem and then allowed it to exist for an extended period of time.
- The violative condition was a result of the operator's deliberate activity.
- The individual who committed the violative condition or practice or allowed it to exist was a supervisor or an agent of the operator, or an agent of a contractor.
- The mine operator or contractor failed to make reasonable efforts to correct the violative condition or practice and knew or had reason to know the action(s) violated a mandatory standard.
- Other factors resulted in a negligence evaluation of "high" or "reckless disregard."

Any one of the circumstances above **may** constitute sufficient grounds for an unwarrantable failure citation or order. When issuing a § 104(d) citation or order, an inspector must include detailed factors in Item 8's narrative and explain how the mine operator engaged in aggravated conduct. Identify the mine operator's agent by position, not name.

**12. Type of Action.** Select the relevant enforcement action type taken (e.g., "104(a)," "104(b)" of the Mine Act).

**13. Type of Issuance.** Select the appropriate issuance: Citation, Order, Safeguard, or Written Notice. Remember that "Safeguard" is only for underground coal mines.

**14. Initial Action.** Select the type of citation or order number and IAS will self-populate. Remember that "Safeguard" is only for underground coal mines.

**14A.** Citation

**14B.** Order

**14C.** Safeguard

**14D.** Written Notice

**14E.** Citation/Order Number

**14F.** Date

**15. Area or Equipment.** Describe the area or equipment, or in case of a § 104(g)(1) order, provide the untrained miner's name.

**Note:** This selection pertains only to an order of withdrawal, which falls under §§ 104(b), 104(d)(1), 104(d)(2), 104(e), 104(g)(1), 107(a), 103(j), and 103(k) of the Mine Act.

- Indicate the area or equipment or in case of a § 104(g)(1) order, the person. "Area" should be the area from which the mine operator shall withdraw employees until the dangerous conditions and causes of those conditions have been corrected.
- Identify the equipment by manufacturer, model, serial number (if known), color, company number, name, etc. Also, note here if the order includes removing the equipment from service.
- For a technical order of withdrawal, which is an order without an underlying physical hazard, such as a § 104(b) order for failure to complete the Part 50 employment or injury reporting reports, use the phrase: "No Area Affected."

**16. Termination Due.** Set the abatement time and provide the date by which the operator must correct the condition or practice. Leave the termination due date blank if issuing an order.

**16A.** Date

**16B.** Time

### **Form 7000-3 Section III - Termination Action**

**17. Action to Terminate.** Describe in detail the specific action(s) taken to correct the cited condition(s) or practice(s) that justifies termination. Do not use short phrases like: "It's been corrected." "It's been fixed."

**18. Terminated.** Enter the date and time of termination.

**18A.** Date

**18B.** Time

### **Form 7000-3 Section IV - Automated System Data**

**19. Type of Inspection (Activity Code).** IAS will autofill this information. For a list of enforcement activity codes, see Appendix A – Enforcement Activity Codes.

**20. Event Number.** IAS will autofill this information.

**21. Primary or Mill. (Metal and Nonmetal (MNM) mines only).** Use "P" if the violation occurred in the production or primary mining phase of the operation.

Generally, "P" includes activities and/or equipment from the mining site up to, but not always including, milling processes.

**Note:** Enter "P" when citing violations at free standing mills with a separate Mine ID number.

**22.AR Name.** IAS will autofill this information.

**23.AR Number.** IAS will autofill this information.

## **CHAPTER 2 – GUIDANCE FOR CITING VIOLATIONS OF SELECTED MINE ACT PROVISIONS**

This chapter describes procedures for citing specific violations and includes form completion guidance for the necessary forms for selected and commonly used Mine Act provisions. As part of this guidance, the chapter includes examples of completed forms for the named provisions. However, as noted in the Disclaimer, the examples might not exactly duplicate the actual forms.

### **Section 104(a) Citation: Advance Notice of Inspection**

Section 103(a) of the Mine Act expressly forbids providing advance notice of inspections outside of specific circumstances.

**Note:** The AR should promptly notify their supervisor and the Office of the Solicitor's Division of Mine Safety and Health (SOL-MSH) before issuing this citation.

### **Form 7000-3 Guidance: Section 104(a) Citation – Advance Notice of Inspection**

**Item 8.** Check that IAS has automatically inserted, "This condition has not been designated as "Significant and Substantial" because the condition violated is a provision of the Mine Act rather than a mandatory safety and health standard."

**Item 9B.** Select "103(a)."

**Item 10.**

**10A.** No Likelihood.

**10B.** No Lost Workdays.

**10C.** No.

**10D.** 0 Persons Affected.

**Item 12.** Select "104(a)."

**Item 16.** Abatement time should be short.

## Sample Section 104(a) Citation – Advance Notice of Inspection

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
<b>Section I--Violation Data</b>				
1. Date	Mo Da Yr 5/1/2023	2. Time (24 Hr. Clock) 0745	3. Citation/ Order Number	7654377
4. Served To	Nancy Doe, Mine Manager		5. Operator	Academy Mining Company
6. Mine	Blue Falcon Sand and Gravel Mine		7. Mine ID	76-54312 (Contractor)
8. Condition or Practice			8a. Written Notice (103g) <input type="checkbox"/>	
<p>The Scalehouse Operator gave advance notice of an MSHA inspection. An Authorized Representative arrived at the Mine Office at approximately 07:45 on 05/01/2023 for the purpose of conducting a Regular Safety and Health Inspection and identified himself and the purpose of the visit to the Scalehouse Operator. The Scalehouse operator promptly called out over the mine-wide radio, "Can someone get Jake (Supervisor), MSHA is here." Transmission on the mine-wide radio can be heard by miners throughout the mine site. Section 103(a) of the Mine Act requires that no advance notice be given to any person when MSHA is on site. By providing advance notice to miners the mine operator has interfered with the inspection. Unannounced inspections are a key part of MSHA's effort to identify unsafe and unhealthy conditions in mines. The Scalehouse Operator who called out on the radio normally worked at the mine Office offsite and Management was not in the Office at the time the call was made over the radio.</p> <p>This condition has not been designated as 'Significant and Substantial' because the condition violated is a provision of the Mine Act rather than a mandatory safety and health standard.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health Safety Other <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	B. Section of Act 103 (a)	C. Part/Section of Title 30 CFR	
<b>Section II--Inspector's Evaluation</b>				
10. Gravity:				
A. Injury or Illness (has) (is): No Likelihood <input checked="" type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input checked="" type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>				D. Number of Persons Affected: 000
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input checked="" type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action		13. Type of Issuance (check one)		
104 (a)		Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action				F. Dated
A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>				Mo Da Yr
15. Area or Equipment				
16. Termination Due				
A. Date	Mo Da Yr	B. Time (24 Hr. Clock)		
5/1/2023		0845		
<b>Section III--Termination Action</b>				
17. Action to Terminate				
The Scalehouse Operator has received additional training in the requirements of the Mine Act, specifically regarding the prohibition of advance notice.				
18. Terminated				
A. Date	Mo Da Yr	B. Time (24 Hr. Clock)		
5/1/2023		0820		
<b>Section IV--Automated System Data</b>				
19. Type of Inspection (activity code)		20. Event Number	21. Primary or Mill	
E01		1234567	P	
22. AR Name			23. AR Number	
Copper Pot			12345	
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>				

## **Section 103(a): Denial of Right of Entry**

### **Established MSHA Mine ID Number**

When a mine operator or its agent directly refuses to allow entry to an active mining operation that has an MSHA mine ID number, the inspector must immediately contact their supervisor. The supervisor shall immediately attempt to contact the mine operator and try to resolve the denial and promptly contact the District Office. If a citation is issued, the inspector must either hand deliver it to the mine operator or send it certified mail, return receipt requested.

#### **CAUTION**

<p>These violations are rare and frequently result in litigation. Supervisors should consult with the District Office and/or Regional Solicitor prior to issuing to assure understanding and concurrence with the actions being taken.</p>
--

### **No Established MSHA Mine ID Number**

When a mine operator or its agent directly refuses to allow entry to an active mining operation that does not have an MSHA mine ID number, the inspector must immediately contact their supervisor to determine whether the mining operation falls under the jurisdiction of the Mine Act. If the supervisor determines that the Mine Act applies, obtain a mine ID number based on the information acquired.

After obtaining the mine ID number, the inspector and field office supervisor should return to the mine or make arrangements to meet with the mine operator and request access under the provisions of the Mine Act.

### **Other Denials of Entry**

Denial of right of entry procedures also apply when the operator has granted entry but does not allow the AR to inspect or to continue an inspection or investigation due to any type of interference such as delay, harassment, or personal assault.

Except in cases of personal threats or assault, the inspector should try to communicate with the mine operator and explain MSHA's entry and inspection rights under § 103(a) of the Mine Act.

MSHA policy requires an inspector to leave the scene when violence seems imminent. If circumstances allow, inform the person(s) involved that attacking an MSHA inspector is a federal crime under 18 U.S.C. § 111 and anyone involved may be subject to arrest and prosecution.

### **CAUTION**

If you think you could be physically harmed or assaulted, immediately leave the property, and promptly notify your supervisor.

**Note:** The District should contact the Regional Solicitor's Office (RSOL) regarding these issuances.

#### **Form 7000-3 Guidance: Section 104(a) Citation – Denial of Right of Entry**

**Item 8.** When entering narrative details, provide the full name of the operator's agent who denied entry; the name of a rank-and-file miner is insufficient. Also, check that IAS has automatically inserted, "This condition has not been designated as "Significant and Substantial" because the condition violated is a provision of the Mine Act rather than a mandatory safety and health standard."

**Item 9B.** Select "103(a)."

**Note:** Similar violations of the Mine Act, such as § 103(f), § 103(h), and § 109(a) may be issued in a similar manner as this example.

**Item 10.**

**10A.** No Likelihood.

**10B.** No Lost Workdays.

**10C.** No.

**10D.** 0 Persons Affected.

**Item 12.** Select "104(a)."

**Item 16.** Abatement time should be short.

## Sample Section 104(a) Citation – Denial of Right of Entry

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
<b>Section I—Violation Data</b>				
1. Date	Mo Da Yr 3/13/2023	2. Time (24 Hr. Clock) 1042		3. Citation/ Order Number 7654321
4. Served To John Doe, Owner			5. Operator Academy Mining Company	
6. Mine Blue Falcon Sand and Gravel Mine			7. Mine ID 76-54312 (Contractor)	
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>Mr. John Doe, Owner of Academy Mining Company., refused to allow an Authorized Representative to enter the Blue Falcon Sand and Gravel Mine. Mr. Doe stated, he would not allow an Inspector of MSHA to enter his property without a search warrant. Mr. Doe was advised that a search warrant was not necessary and refusal to allow the inspection was in violation of 103(a) of the Mine Act.</p> <p>This condition has not been designated as significant and substantial because the violation is a provision of the Mine Act, rather than a mandatory safety or health standard.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act 103 (a)	C. Part/Section of Title 30 CFR	
<b>Section II—Inspector's Evaluation</b>				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input checked="" type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input checked="" type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>				D. Number of Persons Affected: 000
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input checked="" type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104 (a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>				E. Citation/ Order Number
15. Area or Equipment				F. Dated Mo Da Yr
16. Termination Due				
A. Date	Mo Da Yr 3/13/2023	B. Time (24 Hr. Clock) 1138		
<b>Section III—Termination Action</b>				
17. Action to Terminate				
18. Terminated				
A. Date	Mo Da Yr	B. Time (24 Hr. Clock)		
<b>Section IV—Automated System Data</b>				
19. Type of Inspection (activity code) E01		20. Event Number 1234567		21. Primary or Mill P
22. AR Name Copper Pot				23. AR Number 12345
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>				

## **Section 104(b): Order of Withdrawal – Denial of Right of Entry**

Issue a §104(b) order of withdrawal if the operator continues to refuse entry after receiving a §104(a) citation. The District Manager may recommend injunctive proceedings if the operator does not comply with the order.

### **CAUTION**

These violations are rare, often contentious, and frequently result in litigation. Supervisors shall consult with the District Office prior to issuing to assure understanding and concurrence with the actions being taken.
--

**Note:** The District should contact RSOL regarding these issuances.

## **Form 7000-3 Guidance: Section 104(b) Order of Withdrawal – Denial of Right of Entry**

**Item 8.** The narrative must include, "...for the purpose of conducting an inspection of the mine in accordance with the requirements of Section 103(a) of the Federal Mine Safety and Health Act of 1977." Be sure to include a description of the initial condition or practice.

**Item 9B.** Select "103(a)."

**Item 10.** Do not complete.

**Item 12.** Select "104(b)."

**Item 14.** Refer to the initial violation issued.

**Item 15.** Enter "No area affected."

**Item 16.** No abatement time.

## Sample Section 104(b) Order of Withdrawal – Denial of Right of Entry

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
<b>Section I--Violation Data</b>				
1. Date	Mo Da Yr 3/13/2023	2. Time (24 Hr. Clock)	1140	3. Citation/ Order Number
4. Served To			John Doe, Owner	
5. Operator			Academy Mining Company	
6. Mine			Blue Falcon Sand and Gravel Mine	
7. Mine ID			76-54312	
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>Mr. John Doe, Owner of Academy Mining Company., continued to deny an Authorized Representative to enter the Blue Falcon Sand and Gravel Mine, for the purpose of conducting an inspection of the mine in accordance with the requirements of section 103(a) of the Federal Mine Safety and Health Act of 1977.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	103 (a)	
C. Part/Section of Title 30 CFR				
<b>Section II--Inspector's Evaluation</b>				
10. Gravity:				
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected:
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action		104 (b)		
13. Type of Issuance (check one)		Citation <input type="checkbox"/> Order <input checked="" type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action		E. Citation/ Order Number		F. Dated
A. Citation <input checked="" type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>		7654321		Mo Da Yr 3/13/2023
15. Area or Equipment No area Affected				
16. Termination Due		A. Date Mo Da Yr		
B. Time (24 Hr. Clock)				
<b>Section III--Termination Action</b>				
17. Action to Terminate				
18. Terminated		A. Date Mo Da Yr		
B. Time (24 Hr. Clock)				
<b>Section IV--Automated System Data</b>				
19. Type of Inspection (activity code)		20. Event Number		21. Primary or Mill
E01		1234567		P
22. AR Name				23. AR Number
Copper Pot				12345
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>				

## **Section 103(j): Order of Withdrawal**

Enforcement personnel shall consult with the appropriate District Manager before issuing orders of withdrawal under § 103(j). Section 103(j) orders apply to accidents where rescue and recovery work is necessary, and these orders may require additional documentation. The District Manager directs the modification and termination of the § 103(j) orders.

**Note:** Issue a § 103(j) order only under the direction of the District Manager.

### **Form 7000-3 Guidance: Section 103(j): Order of Withdrawal**

**Item 8.** The narrative must describe the hazard and clearly state the prohibited activity.

**Item 9.** Do not complete.

**Item 10.** Do not complete.

**Item 12.** Select “103(j).”

**Item 13.** Select “Order.”

**Item 15.** Describe and clearly identify the “Area or Equipment” affected.

**Item 16.** Do not complete.

**Item 17.** Do not complete.

**Item 18.** Do not complete.

# Sample Section 103(j) Order of Withdrawal

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration	
			
<b>Section I--Violation Data</b>			
1. Date	Mo Da Yr 3/13/2023	2. Time (24 Hr. Clock) 1148	3. Citation/ Order Number 7654323
4. Served To	John Smitz, Underground Superintendent		5. Operator Academy Mining Company
6. Mine	Blue Falcon #1 Mine		7. Mine ID 76-12345 (Contractor)
8. Condition or Practice			8a. Written Notice (103g) <input type="checkbox"/>
<p>A mine fire occurred in unit #17 main haulage area, near the 4160-volt electrical power center. 7 miners have communicated with the surface over the mine's communications system that they are located near the bottom of the fresh air shaft. The mine has one mine rescue time available at the mine and the backup team is now en route to the mine to provide the backup team. All persons are prohibited from entering the mine until the backup team is onsite.</p>			
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>			
9. Violation	A. Health Safety Other <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR
<b>Section II--Inspector's Evaluation</b>			
10. Gravity:			
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>			
B. Injury or Illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>			
C. Significant and Substantial: Yes <input type="checkbox"/> No <input type="checkbox"/>			D. Number of Persons Affected:
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>			
12. Type of Action 103 (j)		13. Type of Issuance (check one) Citation <input type="checkbox"/> Order <input checked="" type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>	
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			E. Citation/ Order Number
15. Area or Equipment This order includes all underground area of this mine, ventilation and communication devices.			F. Dated Mo Da Yr
16. Termination Due		A. Date Mo Da Yr	B. Time (24 Hr. Clock)
<b>Section III--Termination Action</b>			
17. Action to Terminate			
18. Terminated		A. Date Mo Da Yr	B. Time (24 Hr. Clock)
<b>Section IV--Automated System Data</b>			
19. Type of Inspection (activity code) E07		20. Event Number 1234568	21. Primary or Mill
22. AR Name Copper Pot			23. AR Number 12345
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>			

## Section 103(k): Order of Withdrawal

In the event of a mine accident, MSHA can issue orders deemed appropriate to ensure the safety of any person at the mine. The mine operator shall obtain the approval from the MSHA representative, in consultation with state mining agency representatives (if appropriate), about any plan to recover any person in the mine or the mine, or return affected mining areas to normal operations.

After arriving on mine property, use the following language and guidance to issue § 103(k) orders.

### CAUTION

The Mine Act requires an AR to be onsite (“present”) – on mine property – to issue a § 103(k) order.
--

## Form 7000-3 Guidance: Section 103(k) Order of Withdrawal

**Item 8.** The narrative must describe the hazard and clearly state the prohibited activity. Use the following language (as applicable):

“A <accident type> accident occurred on <month day, year>, at approximately <time>. This order is being issued under the authority of the Federal Mine Safety and Health Act of 1977, under Section 103(k) to insure the safety of all persons at the mine, and requires the operator to obtain the approval of an authorized representative of MSHA of any plan to recover any person in the mine or to recover the mine or affected area. This order prohibits any activity in the affected area. The operator is reminded of the obligation to preserve all evidence that would aid in investigating the cause or causes of the accident in accordance with 30 CFR 50.12.”

1. Accident type:
  - A. “fatal”
  - B. “nonfatal”
  - C. “noninjury”
2. If the accident type is unknown, begin the first sentence of the Item 8 narrative with, “An accident occurred...” and end that sentence with a short description of what happened or the known information.
3. <time> is the time of the accident, it may not be the time of death.

If a miner was injured and died later (but before issuing the § 103(k) order), use

the following for the first sentence: "A miner was fatally injured on <month day, year>, at approximately <time>, and died from the injury on <month day, year>, at approximately <time>."

If mine rescue or recovery work is ongoing, rephrase the sentence, "This order prohibits any activity in the affected area" appropriately for the situation.

**Item 9.** Do not complete.

**Item 10.** Do not complete.

**Item 12.** Select "103(k)."

**Item 13.** Select "Order."

**Item 15.** Describe and clearly identify the "Area or Equipment" affected.

**Item 16.** Do not complete.

**Item 17.** Do not complete.

**Item 18.** Do not complete.

**Note:** Refer to the Accident Investigations Procedures Handbook for additional information concerning the modification and termination of § 103(k) orders. The District should consult with SOL-MSH concerning the issuance or scope of the § 103(k) if needed.

# Sample Section 103(k) Order of Withdrawal

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
<b>Section I--Violation Data</b>				
1. Date	Mo Da Yr 3/13/2023	2. Time (24 Hr. Clock)	1248	3. Citation/ Order Number 7654324
4. Served To	John Smitz, Underground Superintendent		5. Operator Academy Mining Company	
6. Mine	Blue Falcon #1 Mine		7. Mine ID	76-12345 (Contractor)
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>A fatal accident occurred on March 13, 2023, at approximately 10 AM. This order is being issued under the authority of the Federal Mine Safety and Health Act of 1977, under section 103(k) to insure the safety of all persons at the mine, and requires the operator to obtain the approval of an Authorized Representative of any plan to recover any person in the mine or to recover the mine or affected area. This prohibits any activity in the affected area. The operator is reminded of the obligation to preserve all evidence that would aid in investigating the cause or causes of the accident in accordance with 30 CFR 50.12.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR	
<b>Section II--Inspector's Evaluation</b>				
10. Gravity:				
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or Illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected:
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action		103 (k)	13. Type of Issuance (check one) Citation <input type="checkbox"/> Order <input checked="" type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>	
14. Initial Action			E. Citation/ Order Number	F. Dated Mo Da Yr
A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>				
15. Area or Equipment				
This order covers the 2nd West section all entries starting from cross cut #1 to the working face at #20.				
16. Termination Due		A. Date Mo Da Yr	B. Time (24 Hr. Clock)	
<b>Section III--Termination Action</b>				
17. Action to Terminate				
18. Terminated		A. Date Mo Da Yr	B. Time (24 Hr. Clock)	
<b>Section IV--Automated System Data</b>				
19. Type of Inspection (activity code)		20. Event Number	21. Primary or Mill	
E07		1234568		
22. AR Name			23. AR Number	
Copper Pot			12345	
<p><small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small></p>				

## Sample Section 103(k) Order of Withdrawal – Modification

Mine Citation/Order Continuation				
<b>Section I—Subsequent Action/Continuation Data</b>				
1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/> <input type="checkbox"/>	2. Dated (Original Issue)	Mo Da Yr 03/13/2023	3. Citation/Order Number 7654324 - 01	
4. Served To John Smitz, Underground Superintendent			5. Operator Academy Mining Company	
6. Mine Blue Falcon #1 Mine			7. Mine ID (Contractor) 76-12345	
<b>Section II—Justification for Action</b>				
<b>Change</b>	<b>From</b>	<b>To</b>		
8. Condition Or Practice				
<b>Reason</b>				
This modification allows the operator to repair the ventilation devices in 2nd West Section in accordance with the plan they submitted.				
<b>Justification</b>				
This order is being modified to allow work identified in the plan titled "Establishing ventilation control devices in the 2nd West Section", dated March 13, 2023. This plan consists of a one-page cover letter and one map. It allows for repairs of the stoppings and face ventilation.				
				See Continuation Form <input type="checkbox"/>
<b>Section III—Subsequent Action Taken</b>				
8. Extended To		A. Date Mo Da Yr	B. Time (24 Hr. Clock)	
			<input type="checkbox"/> C. Vacated <input type="checkbox"/> D. Terminated <input checked="" type="checkbox"/> E. Modified	
<b>Section IV—Inspection Data</b>				
9. Type of Inspection E07		10. Event Number 1234568		
11. AR Name Copper Pot		AR Number 12345	12. Date Mo Da Yr 03/13/2023	13. Time (24 Hr. Clock) 13:52
MSHA Form 7000-3a, Mar 85 (revised)				

## Sample Section 103(k) Order of Withdrawal – Termination

Mine Citation/Order Continuation				
<b>Section I—Subsequent Action/Continuation Data</b>				
1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/> <input type="checkbox"/>	2. Dated (Original Issue)	Mo Da Yr 03/13/2023	3. Citation/Order Number 7654324 - 02	
4. Served To John Smitz, Underground Superintendent			5. Operator Academy Mining Company	
6. Mine Blue Falcon #1 Mine			7. Mine ID (Contractor) 76-12345	
<b>Section II—Justification for Action</b>				
<p>The recovery of the victim has been accomplished, and the accident investigation is completed. It has been determined that it is safe to resume normal mining operations in the affected area.</p>				
<b>Section III—Subsequent Action Taken</b>				
8. Extended To	A. Date Mo Da Yr	B. Time (24 Hr. Clock)	<input type="checkbox"/> C. Vacated <input checked="" type="checkbox"/> D. Terminated <input type="checkbox"/> E. Modified	
<b>Section IV—Inspection Data</b>				
9. Type of Inspection E07		10. Event Number 1234568		
11. AR Name Copper Pot		AR Number 12345	12. Date Mo Da Yr 04/04/2023	13. Time (24 Hr. Clock) 11:55
MSHA Form 7000-3a, Mar 85 (revised)				

## **Section 104(a): Citation**

If, upon inspection or investigation, an inspector believes that a mine operator subject to the Mine Act has violated this Act, or any mandatory health or safety standard, rule, order, or regulation promulgated pursuant to the Mine Act, he or she shall, with reasonable promptness, issue a citation to the mine operator. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the Mine Act, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The requirement for the issuance of a citation with reasonable promptness shall not be a jurisdictional prerequisite to the enforcement of any provision of the Mine Act.

### **Form 7000-3 Guidance: Section 104(a) Citation**

**Item 8.** Clearly state how the mine operator violated the standard, the hazard to miners should an accident or incident occur, and the exposure to the hazard.

**Item 10C.** S&S is yes when the inspector assesses a violation as:

**Injury or Illness(has)(is):** Reasonably Likely, Highly Likely, or Occurred  
**AND**

**Injury of Illness could reasonably be expected to be:** Lost Workdays or Restricted Duty, Permanently Disabling, or Fatal.

**Note:** Remember to provide sufficient information in Item 8's narrative to support S&S. The condition/practice along with good notes will go toward the legal test.

# Sample Section 104(a) Citation – Non-S&S

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
<b>Section I--Violation Data</b>				
1. Date	Mo Da Yr 3/16/2023	2. Time (24 Hr. Clock)	0825	3. Citation/ Order Number 7654325
4. Served To	John Doe, Owner		5. Operator Academy Mining Company	
6. Mine	Blue Falcon Sand and Gravel Mine		7. Mine ID 76-54312 (Contractor)	
8. Condition or Practice			8a. Written Notice (103g) <input type="checkbox"/>	
<p>The outer insulating jacket on the 10/5 AWG, energized 480-volt power cable that supplies power to the Tunnel pump has been damaged. The energized cable has a cut of 3 inches in the outer insulated jacket exposing the inner conductors. The inner conductors have not been damaged and are still insulated. Miners are working in the immediate area exposing them to possible electrical shock and arc flash. The cut in the outer insulated jacket is located about 4 feet behind the handrail. Electrical conductors exposed to mechanical damage shall be protected.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 56.12004	
<b>Section II--Inspector's Evaluation</b>				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input checked="" type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input checked="" type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			D. Number of Persons Affected: 001	
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input checked="" type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104 (a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			E. Citation/ Order Number	
15. Area or Equipment				
16. Termination Due				
A. Date	Mo Da Yr 3/16/2023	B. Time (24 Hr. Clock)	1025	
<b>Section III--Termination Action</b>				
17. Action to Terminate The mine operator removed the pump from service and locked and tagged the visual disconnection box. The outer insulation on the cable has been repaired in a workmanlike manner.				
18. Terminated	A. Date 3/16/2023	B. Time (24 Hr. Clock)	0930	
<b>Section IV--Automated System Data</b>				
19. Type of Inspection (activity code)	E01	20. Event Number	1234567	21. Primary or Mill P
22. AR Name Copper Pot			23. AR Number 12345	
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>				

# Sample Section 104(a) Citation – S&S

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 3/16/2023	2. Time (24 Hr. Clock) 0919		3. Citation/ Order Number 7654326
4. Served To	John Doe, Owner		5. Operator Academy Mining Company	
6. Mine	Blue Falcon Sand and Gravel Mine		7. Mine ID 76-54312	(Contractor)
8. Condition or Practice			8a. Written Notice (103g) <input type="checkbox"/>	
<p>The outer insulating jacket on the 10/5 AWG, energized 480-volt power cable that supplies power to the Tunnel pump has been damaged. The energized cable has a cut of 3 inches in the outer insulated jacket exposing the inner conductors. The inner conductors have been damaged and the copper wire is showing on the red and black phase leads. Miners are working in the immediate area exposing them to possible electrocution and arc flash. The cut in the outer insulated jacket and the exposed phase leads is located about 4 feet behind the handrail. The area is wet and moist. Electrical conductors exposed to mechanical damage shall be protected.</p> <p>Standard 56.12004 was cited 1 time in two years at mine 7654312 (1 to the operator, 0 to a contractor).</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR  56.12004	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input checked="" type="checkbox"/>				
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104 (a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			E. Citation/ Order Number	F. Dated Mo Da Yr
15. Area or Equipment				
16. Termination Due				
A. Date	Mo Da Yr 3/16/2023	B. Time (24 Hr. Clock) 0930		
Section III--Termination Action				
17. Action to Terminate				
The mine operator immediately removed the power on the pump by locking and tagging the disconnection box. The outer insulation and the inner conductors have been repaired in a workmanlike manner.				
18. Terminated	A. Date 3/16/2023	B. Time (24 Hr. Clock) 0929		
Section IV--Automated System Data				
19. Type of Inspection (activity code)	E01	20. Event Number 1234567	21. Primary or Mill P	
22. AR Name Copper Pot			23. AR Number 12345	
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>				

## **Section 104(b): Order of Withdrawal – Failure to Abate**

The inspector should consider all circumstances when a citation's abatement time has expired and determine whether there is a reasonable basis for extending the abatement date. If there is no justification to extend the abatement date, and the cited condition or practice remains unabated, the inspector must issue a § 104(b) order of withdrawal. When the mine operator has abated the condition or practice originally cited, the AR can terminate the order.

### **Form 7000-3 Guidance: Section 104(b) Order of Withdrawal – Failure to Abate**

**Item 8.** Describe the operator's failure to abate the previously cited violation. Be sure to include a detailed description of the initial condition or practice.

**Item 9.** Complete Item 9B or 9C to match the original violation that is referenced in item 14.

**Item 10.** Do not complete.

**Item 11.** Do not complete.

**Item 12.** Select "104(b)."

**Item 13.** Select "Order."

**Item 14.**

**Item 14A.** Select "Citation."

**Item 14E.** Enter the initial citation number.

**Item 14F.** Enter the date of citation issuance.

**Item 15.** Describe and clearly identify the "Area or Equipment" affected. Enter the phrase "No area affected" if this is a technical violation.

**Item 16.** Do not complete. Terminate the § 104(b) order when the mine operator corrects the out of compliance condition(s).

**Item 17.** When terminating the § 104(b) order, IAS will automatically terminate the original citation.

## Sample Section 104(a) Citation and Sample Section 104(b) Order of Withdrawal

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 3/16/2023	2. Time (24 Hr. Clock) 1000	3. Citation/ Order Number	7654327
4. Served To	John Smitz, Underground Superintendent		5. Operator	Academy Mining Company
6. Mine	Blue Falcon #1 Mine		7. Mine ID	76-12345 (Contractor)
8. Condition or Practice			8a. Written Notice (103g) <input type="checkbox"/>	
<p>The North Sump power cable was observed laying on the mine floor across the roadway. The energized 2 AWG, 480-volt cable appears to have been driven over by a rubber tired machine and pushed down into the clay on the floor. The cable doesn't appear to be damaged. The cable is located in the intake entry adajacent to the North Sump. This condition exposes miners to possible electrical shock and arc flash. Power wires and cables, except trolley wires, trolley feeder wires, and bare signal wires, shall be insulated adequately and fully protected.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 75.517	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input checked="" type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input checked="" type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action		13. Type of Issuance (check one)		
104 (a)		Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action			E. Citation/ Order Number	
A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			F. Dated Mo Da Yr	
15. Area or Equipment				
16. Termination Due				
A. Date	Mo Da Yr 3/16/2023	B. Time (24 Hr. Clock)	1030	
Section III--Termination Action				
17. Action to Terminate				
18. Terminated				
A. Date	Mo Da Yr	B. Time (24 Hr. Clock)		
Section IV--Automated System Data				
19. Type of Inspection (activity code)		20. Event Number		21. Primary or Mill
E01		1234569		
22. AR Name			23. AR Number	
Copper Pot			12345	
<p>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</p>				

# Sample Section 104(b) Order of Withdrawal

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 3/16/2023	2. Time (24 Hr. Clock) 1100		3. Citation/ Order Number 7654328
4. Served To	John Smitz, Underground Superintendent		5. Operator Academy Mining Company	
6. Mine	Blue Falcon #1 Mine		7. Mine ID 76-12345 (Contractor)	
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>No apparent effort was made by the operator to adequately protect the #2 AWG, 480-volt cable. The operator is hereby ordered to withdraw the North Sump electrical power to the sump and close the intake roadway on both sides of the power cable until the cable has been protected and an MSHA inspector can observe that the cable has been adequately protected.</p> <p>Standard 75.517 was cited 1 time in two years at mine 7612345 (1 to the operator, 0 to a contractor).</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health Safety Other <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 75.517	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected:
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104 (b)		13. Type of Issuance (check one) Citation <input type="checkbox"/> Order <input checked="" type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action				
A. Citation <input checked="" type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>		E. Citation/ Order Number 7654327		F. Dated Mo Da Yr 3/16/2023
15. Area or Equipment The North Sump electrical system and the intake roadway.				
16. Termination Due				
A. Date Mo Da Yr		B. Time (24 Hr. Clock)		
Section III--Termination Action				
17. Action to Terminate				
18. Terminated				
A. Date Mo Da Yr		B. Time (24 Hr. Clock)		
Section IV--Automated System Data				
19. Type of Inspection (activity code) E01		20. Event Number 1234569		21. Primary or Mill
22. AR Name Copper Pot				23. AR Number 12345
<p>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</p>				

## **Section 104(a): Citation – Working in Violation of a Section 104(b) Order of Withdrawal**

**Note:** Regardless of the negligence evaluation, issue a § 104(a) citation, not a § 104(d) citation.

### **Form 7000-3 Guidance: Section 104(a) Citation – Working in Violation of a Section 104(b) Order of Withdrawal**

**Item 9B.** Enter the section of the Mine Act violated.

**Item 9C.** Do not complete.

**Item 10.** Enter “No Likelihood”.

**Item 11.** Enter “No Lost Workdays”.

**Item 12.** Select “104(a).”

**Item 13.** Select “Citation.”

**Item 14.**

**Item 14A.** Select "Order."

**Item 14E.** Enter the § 104(b) order number.

**Item 14F.** Enter the date of the § 104(b) order issuance.

**Item 15.** Do not complete.

**Item 16.** Enter a due date and time. Keep in mind the operator has been previously issued a violation and an order, which serve as prior notice of the condition(s). Therefore, a short time for abatement to comply with the previous § 104(b) order is likely appropriate.

**Item 17.** Enter the actions taken to abate the § 104(a) citation only if the operator complied with the previously issued § 104(b) order prior to the issuance of this citation.

**Item 18.** Enter the due date and time only if the condition is abated.

# Sample Section 104(a) Citation – Working in Violation of a Section 104(b) Order of Withdrawal

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 3/17/2023	2. Time (24 Hr. Clock) 0800	3. Citation/ Order Number	7654329
4. Served To	John Smitz, Underground Superintendent		5. Operator	Academy Mining Company
6. Mine	Blue Falcon #1 Mine		7. Mine ID	76-12345 (Contractor)
8. Condition or Practice			8a. Written Notice (103g) <input type="checkbox"/>	
<p>The mine operator has continued to operate the North Sump, and the power cable has not been protected from damage and remains on the mine floor in the intake roadway even though a 104(b) Order of Withdrawal #7654328 was issued by MSHA on March 16, 2023, at 11:00 AM, for non-compliance and required the mine operator to remove the power from the North Sump and close the roadways. During today's inspection, it was determined that the power on the North Sump was on and pumping water. The #2 AWG cable remained on the mine floor exposed to damage. The superintendent stated, "They had to have the water pressure for the sectional equipment." This condition has not been designated as "significant and substantial" because the conduct violated is a provision of the Mine Act, rather than a mandatory safety and health standard.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act 104 (b)	C. Part/Section of Title 30 CFR	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input checked="" type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input checked="" type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input checked="" type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104 (a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input checked="" type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			E. Citation/ Order Number	F. Dated Mo Da Yr 7654328 3/16/2023
15. Area or Equipment				
16. Termination Due				
A. Date	Mo Da Yr 3/17/2023	B. Time (24 Hr. Clock)	0815	
Section III--Termination Action				
17. Action to Terminate				
18. Terminated				
A. Date	Mo Da Yr	B. Time (24 Hr. Clock)		
Section IV--Automated System Data				
19. Type of Inspection (activity code)	E01	20. Event Number	1234569	
21. Primary or Mill				
22. AR Name Copper Pot			23. AR Number 12345	
<p>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</p>				

## Section 104(d)(1): Citation

### Criteria for Issuing a Section 104(d)(1) Citation

An inspector shall issue a § 104(d)(1) citation if there is:

1. A violation of a mandatory health or safety standard that significantly and substantially contributes to the cause and effect of a mine safety or health hazard; and
2. An unwarrantable failure of the mine operator or contractor to comply with the mandatory standard.

**Note:** MSHA cannot issue a violation of the Mine Act or 30 C.F.R. Parts 40, 41, 43, 44, 45, or 50 [excluding § 50.10] as a § 104(d) citation or a § 104(d) order even if the inspector determines the negligence evaluation to be "high" or "reckless disregard." However, MSHA can cite violations of interim mandatory health and safety standards found in Titles II and III of the Mine Act, not superseded by mandatory health and safety standards, as "S&S" and evaluate them as unwarrantable failure citations or orders based on the evaluations conducted in Items 10A and 10B of Form 7000-3.

A violation is caused by an unwarrantable failure if the inspector determines that the mine operator or contractor engaged in aggravated conduct constituting more than ordinary negligence.

Prior to issuance, inspector should review citations or orders considered as "high" or "reckless disregard" negligence for aggravated conduct. Factors to consider when determining "aggravated conduct" may include:

1. The violative condition or practice posed a high degree of danger to miners, warranting the operator's increased attention to prevent or correct the hazards.
2. The violative condition or practice was obvious or extensive.
3. The violative condition or practice had existed for a period of time.
4. The mine or contractor received repeated similar violations in the recent past.
5. The operator's agent or contractor's agent had conducted an examination, been in the area, or was aware of the existence of the condition.
6. The operator knew or had reason to know the action(s) violated a mandatory standard.
7. The violative condition or practice had been reported to the operator or contractor

who failed to correct or adequately address the problem and then allowed it to exist for an extended period of time.

8. The violative condition was a result of the operator's deliberate activity.
9. The individual who committed the condition or practice or allowed it to exist was a supervisor or an agent of the operator, or an agent of a contractor.
10. The mine operator or contractor failed to make reasonable efforts to correct the violative condition or practice, and knew or had reason to know the action(s) violated a mandatory standard.
11. Other factors resulted in a negligence evaluation of "high" or "reckless disregard."

Any one of the circumstances above **may** constitute sufficient grounds for an unwarrantable failure citation or order. Include detailed factors and explain how the operator engaged in aggravated conduct in the Item 8 narrative of Form 7000-3 when issuing a § 104(d) citation or order. Identify the operator's agent by position, not name.

#### **Form 7000-3 Guidance: Section 104(d)(1) Citation**

**Item 8.** The citation must be S&S, therefore a thorough narrative and sufficient facts to support the S&S finding. The factors that explain how the operator or the agent engaged in any of the factors could be considered for aggravated conduct.

**Note:** When completing the narrative section, be sure to omit names. Identify the agent of the operator who knew or should have known of the violative condition or practice by position only.

The violation narrative must include the following statement: "This violation is an unwarrantable failure to comply with a mandatory standard."

**Item 10C.** Select "Yes."

**Item 11.** Negligence must be at least "High."

**Item 12.** Select "104(d)(1)."

**Item 13.** Select "Citation."

# Sample Section 104(d)(1) Citation

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
<b>Section I--Violation Data</b>				
1. Date	Mo Da Yr 3/20/2023	2. Time (24 Hr. Clock) 0730	3. Citation/ Order Number	7654330
4. Served To	John Smitz, Underground Superintendent		5. Operator	Academy Mining Company
6. Mine	Blue Falcon #1 Mine		7. Mine ID	76-12345 (Contractor)
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>Accumulations of loose coal, coal fines, and float coal dust have been allowed to accumulate in dangerous amounts underneath and along both sides of the ribs, and mine floor of the #1 Section Conveyor Belt entry from XC10 to XC20. The operating conveyor belt for 700 feet had accumulations consistently measuring 24 inches in depth. The tightly compacted coal accumulations were deposited under the bottom belt conveyor rollers which resulted in the rollers spinning in the coal creating frictional heating. Several rollers throughout the 700 feet distance were damaged which caused extreme heating due to metal on metal from the failed bearings. Three rollers were glowing red from the frictional heat. 10 miners are working on the active section inby this cited condition, three shifts per day, five days per week. Based on continued normal mining practices, this condition will expose the section miners to serious injuries associated with smoke inhalation and fire hazards. These accumulations are obvious and extensive and are evident to all miners in the areas. Indications from the date, time, and initials at XC 15 indicate that the On-shift certified examiner was present on this belt only one hour ago. Accumulations of coal dust, float coal dust and loose coal</p> <p style="text-align: right;">See Continuation Form (MSHA Form 7000-3a) <input checked="" type="checkbox"/></p>				
9. Violation	A. Health Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR  75.400	
<b>Section II--Inspector's Evaluation</b>				
10. Gravity:				
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input checked="" type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input checked="" type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action		13. Type of Issuance (check one)		
104 (d) (1)		Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action				F. Dated
A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>				Mo Da Yr
15. Area or Equipment				
16. Termination Due				
A. Date	Mo Da Yr	B. Time (24 Hr. Clock)		
3/20/2023		0930		
<b>Section III--Termination Action</b>				
17. Action to Terminate				
18. Terminated				
A. Date	Mo Da Yr	B. Time (24 Hr. Clock)		
<b>Section IV--Automated System Data</b>				
19. Type of Inspection (activity code)		20. Event Number	21. Primary or Mill	
E01		1234569		
22. AR Name			23. AR Number	
Copper Pot			12345	
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>				

## Sample Continuation Form Section 104(d)(1) Citation

Mine Citation/Order Continuation		U.S. Department of Labor Mine Safety and Health Administration		
<b>Section I--Subsequent Action/Continuation Data</b>				
1. Subsequent Action <b>Continuation</b> <input type="checkbox"/> <input checked="" type="checkbox"/>		2. Dated (Original Issue) Mo Da Yr 3/20/2023		3. Citation/Order Number 7654330
4. Served To John Smitz, Underground Superintendent			5. Operator Academy Mining Company	
6. Mine Blue Falcon #1 Mine			7. Mine ID (Contractor) 76-12345	
<b>Section II--Justification for Action</b>				
Continuation of 8. Condition or Practice				
shall be cleaned up and not be permitted to accumulate. This violation is an unwarrantable failure to comply with a mandatory standard.				
See Continuation Form <input type="checkbox"/>				
<b>Section III--Subsequent Action Taken</b>				
8. Extended To		A. Date Mo Da Yr		B. Time (24 Hr. Clock)
				<input type="checkbox"/> C. Vacated <input type="checkbox"/> D. Terminated <input type="checkbox"/> E. Modified
<b>Section IV--Inspection Data</b>				
9. Type of Inspection E01		10. Event Number 1234569		
11. AR Name Copper Pot		AR Number 12345	12. Date Mo Da Yr 3/20/2023	13. Time (24 Hr. Clock) 0730
MSHA Form 7000-3a, Mar 85 (revised)				

## **Section 104(d)(1): Order of Withdrawal**

### **Form 7000-3 Guidance: Section 104(d)(1) Order of Withdrawal**

**Item 8.** A § 104(d)(1) order can be either “S&S” or “non-S&S,” therefore a thorough narrative is necessary. If the evaluation is S&S include sufficient facts to support the S&S finding. The factors that explain how the operator or the agent engaged in any of the factors could be considered for aggravated conduct.

**Note:** When completing the narrative section, be sure to omit names. Identify the agent of the operator who knew or should have known of the violative condition or practice by position only.

The violation narrative must include the following statement: “This violation is an unwarrantable failure to comply with a mandatory standard.”

**Item 11.** Negligence must be at least “High.”

**Item 12.** Select “104(d)(1).”

**Item 13.** Select “Order.”

**Items 14A-D.** IAS will autofill.

**Item 14E.** Select the number for the previous § 104(d)(1) citation.

**Note:** All § 104(d)(1) orders must refer to the first § 104(d)(1) citation issued in the D series sequence.

**Item 14F.** IAS will autofill.

**Item 15.** Describe and clearly identify the “Area or Equipment” affected.

**Item 16.** Do not complete.

# Sample Section 104(d)(1) Order of Withdrawal

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
<b>Section I--Violation Data</b>				
1. Date	Mo Da Yr 3/20/2023	2. Time (24 Hr. Clock) 1030	3. Citation/ Order Number	7654331
4. Served To	John Smitz, Underground Superintendent		5. Operator	Academy Mining Company
6. Mine	Blue Falcon #1 Mine		7. Mine ID	76-12345 (Contractor)
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>The operating #1 Section Conveyor-drive tail pulley guard was not installed and securely in place while the conveyor was in motion. The unguarded tail pulley is located at knee level and a miner could easily accidentally trip and fall into the rotating pulley causing serious entanglement injuries or a fatality. The guard had been removed previously and set on the adjacent rib and not replaced after the belt move. The section foreman stated, "he was getting around to it, but forgot about it." The foreman stated that they had mined two cuts this morning. The foreman turned off the conveyor belts and locked and tagged the belt to make the repairs. Except when testing the machinery, guards shall be securely in place while machinery is be operated. This violation is an unwarrantable failure to comply with a mandatory standard.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health <input type="checkbox"/> Safety <input checked="" type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR	75.1722 (c)
<b>Section II--Inspector's Evaluation</b>				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input checked="" type="checkbox"/>				
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input checked="" type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action		13. Type of Issuance (check one)		
104 (d) (1)		Citation <input type="checkbox"/> Order <input checked="" type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action			E. Citation/ Order Number	F. Dated
A. Citation <input checked="" type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			7654330	Mo Da Yr 3/20/2023
15. Area or Equipment				
The #1 Section Conveyor belt, from the tail to head drive.				
16. Termination Due		A. Date	Mo Da Yr	B. Time (24 Hr. Clock)
		3/20/2023		
<b>Section III--Termination Action</b>				
17. Action to Terminate				
The operator has installed and securely fastened the tail pulley conveyor guard into place.				
18. Terminated		A. Date	Mo Da Yr	B. Time (24 Hr. Clock)
		3/20/2023		1100
<b>Section IV--Automated System Data</b>				
19. Type of Inspection (activity code)		20. Event Number		21. Primary or Mill
E01		1234569		
22. AR Name				23. AR Number
Copper Pot				12345
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>				

## **Section 104(d)(2): Order of Withdrawal**

### **Form 7000-3 Guidance: Section 104(d)(2) Order of Withdrawal**

**Item 8.** Remember that an inspector can evaluate a § 104(d)(2) order as “S&S” or “non-S&S” so ensure a thorough narrative. If the evaluation is S&S include sufficient facts to support the S&S finding. The factors that explain how the operator or the agent engaged in any of the factors could be considered for aggravated conduct.

**Note:** When completing the narrative section, be sure to omit names. Identify the agent of the operator who knew or should have known of the violative condition or practice by position only.

The violation narrative must include the following statement: “This violation is an unwarrantable failure to comply with a mandatory standard.”

**Item 11.** Negligence must be at least “High.”

**Item 12.** Select “104(d)(2).”

**Item 13.** Select “Order.”

**Items 14A-D.** IAS will autofill.

**Item 14E.** Select the first § 104(d)(1) order number.

**Note:** All § 104(d)(2) orders must refer to the first § 104(d)(1) order issued in the D series sequence.

**Item 14F.** IAS will autofill.

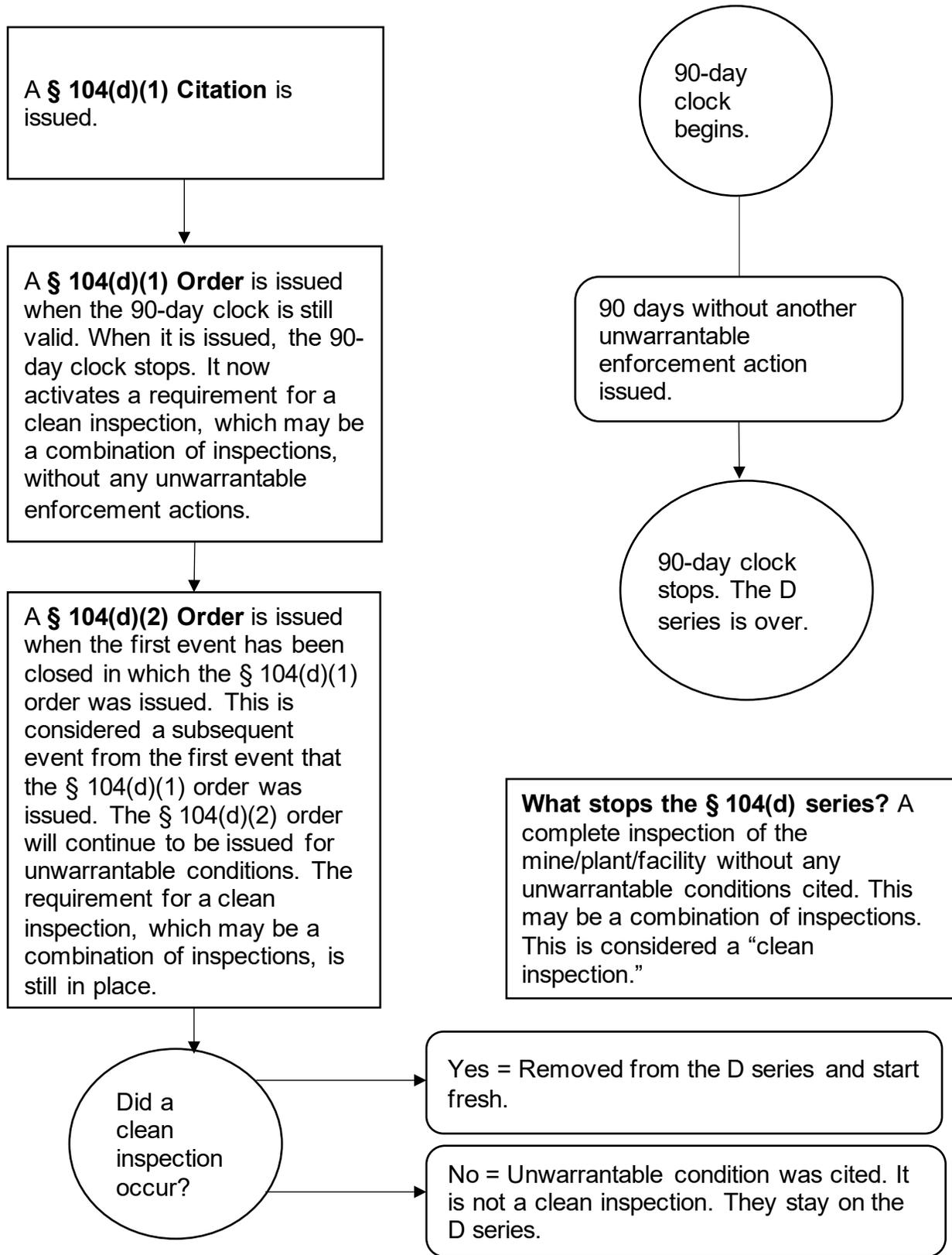
**Item 15.** Describe and clearly identify the “Area or Equipment” affected.

**Item 16.** Do not complete.

# Sample Section 104(d)(2) Order of Withdrawal

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 3/20/2023	2. Time (24 Hr. Clock) 1402		3. Citation/ Order Number 7654332
4. Served To John Smitz, Underground Superintendent			5. Operator Academy Mining Company	
6. Mine Blue Falcon #1 Mine			7. Mine ID 76-12345 (Contractor)	
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>The rib located in crosscut 15 on the 1st North working section in the #3 intake entry was loose. The loose rib was located adjacent to the sectional power center where miners frequently travel. The loose rib measured 4 feet in height, 10 feet in length, and varying thickness from 6 inches to one foot. The rib was gapped at the top approximately 6-8 inches. The section foreman used a scaling bar and pulled the loose rib down in one movement. The date, time, and initial board indicated that the foreman had performed an on-shift shortly before this condition was cited. The size of the loose rib exposed miners to serious crushing injuries. Loose ribs of areas where persons work or travel shall be supported or otherwise controlled to protect persons from hazards related to falls of ribs. This violation is an unwarrantable failure to comply with a mandatory standard.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation				
A. Health <input type="checkbox"/>	Safety <input checked="" type="checkbox"/>	Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 75.202 (a)
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input checked="" type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input checked="" type="checkbox"/>				
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input checked="" type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104 (d) (2)			13. Type of Issuance (check one) Citation <input type="checkbox"/> Order <input checked="" type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>	
14. Initial Action				
A. Citation <input type="checkbox"/>	B. Order <input checked="" type="checkbox"/>	C. Safeguard <input type="checkbox"/>	D. Written Notice <input type="checkbox"/>	E. Citation/ Order Number 7654331
				F. Dated Mo Da Yr 3/20/2023
15. Area or Equipment Crosscut 15 on 1st North Section #3 intake entry.				
16. Termination Due				
A. Date Mo Da Yr		B. Time (24 Hr. Clock)		
Section III--Termination Action				
17. Action to Terminate The foreman pulled the rib down.				
18. Terminated				
A. Date Mo Da Yr 3/20/2023		B. Time (24 Hr. Clock) 1410		
Section IV--Automated System Data				
19. Type of Inspection (activity code) E01	20. Event Number 1234570		21. Primary or Mill	
22. AR Name Copper Pot			23. AR Number 12345	
<p>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</p>				

## Section 104(d) Series Enforcement Actions Process



## **Section 104(e)(1): Pattern of Violations Notice**

In accordance with 30 C.F.R. § 104.3(a), when a mine has a pattern of recurrent S&S violations of mandatory safety or health standards that demonstrate a mine operator's disregard for the health and safety of miners, the District Manager will issue a pattern of violations (POV) notice to the operator that specifies the basis of MSHA's action and will provide a copy of the notice to the miners' representative. The notice must identify each violation that is part of the pattern.

This section also allows for withdrawing all persons from the affected area if MSHA finds another S&S violation within 90 days of issuing the POV notice. The § 104(e) withdrawal order remains in effect until MSHA finds that this subsequent violation has been abated. However, abating the subsequent violation does not terminate the POV notice.

## **Form 7000-3 Guidance: Section 104(e)(1) Pattern of Violations Notice**

**Item 8.** IAS prepopulates language from the Mine Act as follows:

“Pursuant to Section 104(e)(1) of the Federal Mine Safety and Health Act of 1977, the named Operator is hereby notified that a Pattern of Violations exists at the mine as identified by its Mine ID. If upon any inspection within 90 days after the issuance of this notice, an authorized representative of the Secretary finds any violation of a mandatory health or safety standard that could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard, the authorized representative shall issue an order requiring the operator to cause all persons in the area affected by such violation, except those persons referred to in subsection (c), to be withdrawn from, and to be prohibited from entering such area until an authorized representative of the Secretary determines that such violation has been abated. This Written Notice of Pattern of Violation shall remain posted at the mine under the terms of Section 109(a) of the Mine Safety and Health Act of 1977 until such notice is terminated by an authorized representative of the Secretary of Labor in accordance with Section 104.5, Title 30 Code of Federal Regulations.”

The following language (with modifications as necessary) should then be added:

“To illustrate this pattern of violations, the following groups of violations could have significantly contributed to the cause and effect of mine health or safety hazards: <provide list of violations>.”

These violations constitute a pattern of violations of mandatory

health and safety standards in the mine and could have significantly contributed to the cause and effect of mine health or safety hazards.

If within 90 days of this notice, an authorized representative finds any violation of a mandatory health or safety standard that could significantly and substantially contribute to the cause and effect of a mine safety or health hazard, the authorized representative shall issue an order.

This order requires the operator to withdraw from the area all persons the violation affects, except those persons referred to in Section 104(c) of the Mine Act. These individuals will be prohibited from re-entering until an authorized representative of the Secretary determines that such hazard has been abated. This notice of Pattern of Violations shall remain posted at the mine until it is terminated by an authorized representative.”

The District Manager should consult SOL-MSH when drafting the notice.

**Note:** See the Sample Section 104(e)(1) POV Notice on the following page for an example of the inserted language and notice format.

**Item 9.** Do not complete.

**Item 10.** Do not complete.

**Item 11.** Do not complete.

**Item 12.** Select "104(e)(1)."

**Item 13.** Select "Written Notice."

**Item 14.** Do not complete.

**Item 15.** Do not complete.

**Item 16.** Do not complete.

**Item 17.** Do not complete.

**Item 18.** Do not complete.

# Sample Section 104(e)(1) Pattern of Violations Notice

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 2/15/2023	2. Time (24 Hr. Clock) 0800		3. Citation/ Order Number 7654333
4. Served To	Jane Doe, Mine Manager		5. Operator Academy Mining Company, Inc.	
6. Mine	Blue Falcon #2 Mine		7. Mine ID 76-01254 (Contractor)	
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>Pursuant to Section 104(e)(1) of the Federal Mine Safety and Health Act of 1977, the named Operator is hereby notified that a Pattern of Violations exists at the mine as identified by its Mine ID. If upon any inspection within 90 days after the issuance of this notice, an authorized representative of the Secretary finds any violation of a mandatory health or safety standard that could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard, the authorized representative shall issue an order requiring the operator to cause all persons in the area affected by such violation, except those persons referred to in subsection (c), to be withdrawn from, and to be prohibited from entering such area until an authorized representative of the Secretary determines that such violation has been abated. This Written Notice of Pattern of Violation shall remain posted at the mine under the terms of Section 109(a) of the Mine Safety and Health Act of 1977 until such notice is terminated by an authorized representative of the Secretary of Labor in accordance with Section 104.5, Title 30 Code of Federal Regulations.</p>				
See Continuation Form (MSHA Form 7000-3a) <input checked="" type="checkbox"/>				
9. Violation	A. Health Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected:
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action		13. Type of Issuance (check one)		
104 (e) (1)		Citation <input type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input checked="" type="checkbox"/>		
14. Initial Action				F. Dated
A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>				Mo Da Yr
15. Area or Equipment				
16. Termination Due				
A. Date		B. Time (24 Hr. Clock)		
Mo Da Yr				
Section III--Termination Action				
17. Action to Terminate				
18. Terminated				
A. Date		B. Time (24 Hr. Clock)		
Mo Da Yr				
Section IV--Automated System Data				
19. Type of Inspection (activity code)		20. Event Number		21. Primary or Mill
E01		1234571		
22. AR Name				23. AR Number
Copper Pot				12345
<p>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</p>				

# Sample Continuation Form Section 104(e)(1) Pattern of Violations Notice

Mine Citation/Order  
Continuation

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



Section I--Subsequent Action/Continuation Data

1. Subsequent Action <input type="checkbox"/> 1a. Continuation <input checked="" type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 2/15/2023	3. Citation/ Order Number 7654333
4. Served To Jane Doe, Mine Manager		5. Operator Academy Mining Company, Inc.
6. Mine Blue Falcon #2 Mine		7. Mine ID 76-01254 (Contractor)

Section II--Justification for Action

Continuation of 8. Condition or Practice

As illustrative of this pattern, the violations in the group below are representative of violations which are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards:

1. MSHA issued the following (example: forty-five (45) citations/orders citing conditons and/or practices that contribute to mines hazardous conditions throughout the mine: 1234567 (1/1/2023), 7654321 (1/2/2023), XXXXXXXX (xx/xx/xxxxx), list the rest of the cited conditions in this format.

Two or more of the violations in the above group constitutes a pattern of violation of a mandatory health and safety standard in the coal or other mine which are of such nature as could have significantly and substantially contributed to the cause and effect of caol or other mine health or safety hazards.

If upon any inspection within 90 days after issuance of this Pattern of Violations Notice, an Authorized Representative of the Secretary finds any violation of a mandatory health or safety standard that could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard, the Authorized Representative shall issue an order requiring the operator to cause all persons in the area affected by such violation, except those persons referred to in Section 104(c) of the Mine Act, to be withdrawn from, and to be prohibited from entering such area until an Authorized Representative of the Secretary determines that such violation has been abated. This Notice of Pattern of Violations shall remain posted at the (name the mine) until it is terminated by an Authorized Representative.

See Continuation Form

Section III--Subsequent Action Taken

8. Extended To	A. Date Mo Da Yr	B. Time (24 Hr. Clock)	<input type="checkbox"/> C. Vacated	<input type="checkbox"/> D. Terminated	<input type="checkbox"/> E. Modified
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Section IV--Inspection Data

9. Type of Inspection E01	10. Event Number 1234571				
11. AR Name Copper Pot	AR Number 12345	12. Date Mo Da Yr 2/15/2023	13. Time (24 Hr. Clock) 0800		

MSHA Form 7000-3a, Mar 85 (revised)

## **Section 104(e)(1): Order of Withdrawal**

### **Form 7000-3 Guidance: Section 104(e)(1) Order of Withdrawal**

**Item 8.** At the end of the narrative, add the following statement: "A Notice of Pattern of Violations, <POV notice number>, was issued on <date>."

**Items 10A-D.** Complete.

**Item 11.** Select Negligence level.

**Item 12.** Select "104(e)(1)."

**Item 13.** Select "Order."

**Item 14D.** Select "Written Notice."

**Item 14E.** Select the § 104(e)(1) notice violation number.

**Item 14F.** Enter the POV notice issue date.

**Item 15.** Describe and clearly identify the "Area or Equipment" affected.

**Item 16.** Do not complete.

# Sample Section 104(e)(1) Order of Withdrawal

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
<b>Section I--Violation Data</b>				
1. Date	Mo Da Yr 2/20/2023	2. Time (24 Hr. Clock) 0831		3. Citation/ Order Number 7654334
4. Served To Jane Doe, Mine Manager			5. Operator Academy Mining Company, Inc.	
6. Mine Blue Falcon #2 Mine			7. Mine ID 76-01254 (Contractor)	
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>Accumulations of loose coal, dry coal fines, and gear oil have saturated the accumulations surrounding the area on the No.1 sectional belt conveyor tail pulley on the 2nd North working section. The accumulation measured 15 inches in depth covering the surrounding Joy Feeder breaker roller bearing. The accumulation extended outby for 21 feet and ranged in depth from 12 inches to 24 inches. The accumulation has been compacted around the tail rollers and guards. This is generating frictional heat creating a fire hazard and exposing the miners to a potential of a fire.</p> <p>"A Notice of Pattern of Violations, (7654333) was issued on (2/15/2023)."</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 75.400	
<b>Section II--Inspector's Evaluation</b>				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input checked="" type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected: 010
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104 (e) (1)		13. Type of Issuance (check one) Citation <input type="checkbox"/> Order <input checked="" type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input checked="" type="checkbox"/>		E. Citation/ Order Number 7654333		F. Dated Mo Da Yr 2/15/2023
15. Area or Equipment The 2nd North working section from cross cut #1 to the working face at cross cut #50 all entries.				
16. Termination Due		A. Date Mo Da Yr	B. Time (24 Hr. Clock)	
<b>Section III--Termination Action</b>				
17. Action to Terminate				
18. Terminated		A. Date Mo Da Yr	B. Time (24 Hr. Clock)	
<b>Section IV--Automated System Data</b>				
19. Type of Inspection (activity code) E01		20. Event Number 1234571		21. Primary or Mill
22. AR Name Copper Pot				23. AR Number 12345
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>				

## **Section 104(e)(2): Order of Withdrawal**

Where MSHA has ordered that the mine operator withdraw miners under § 104(e)(1), MSHA shall issue an additional withdrawal order if an inspector finds an S&S violation during any subsequent inspection.

### **Form 7000-3 Guidance: Section 104(e)(2) Order of Withdrawal**

**Item 8.** At the end of the narrative, add the following statement: "A Notice of Pattern of Violations, <POV notice number>, was issued on <date>."

**Items 10A-D.** Complete.

**Item 11.** Select Negligence level.

**Item 12.** Select "104(e)(2)."

**Item 13.** Select "Order."

**Items 14A-D.** IAS will autofill and should enter the date and time of the first § 104(e)(1) order issued in the POV sequence.

**Item 14E.** Select the first § 104(e)(1) order number.

**Item 14F.** IAS will autofill after selecting 14E.

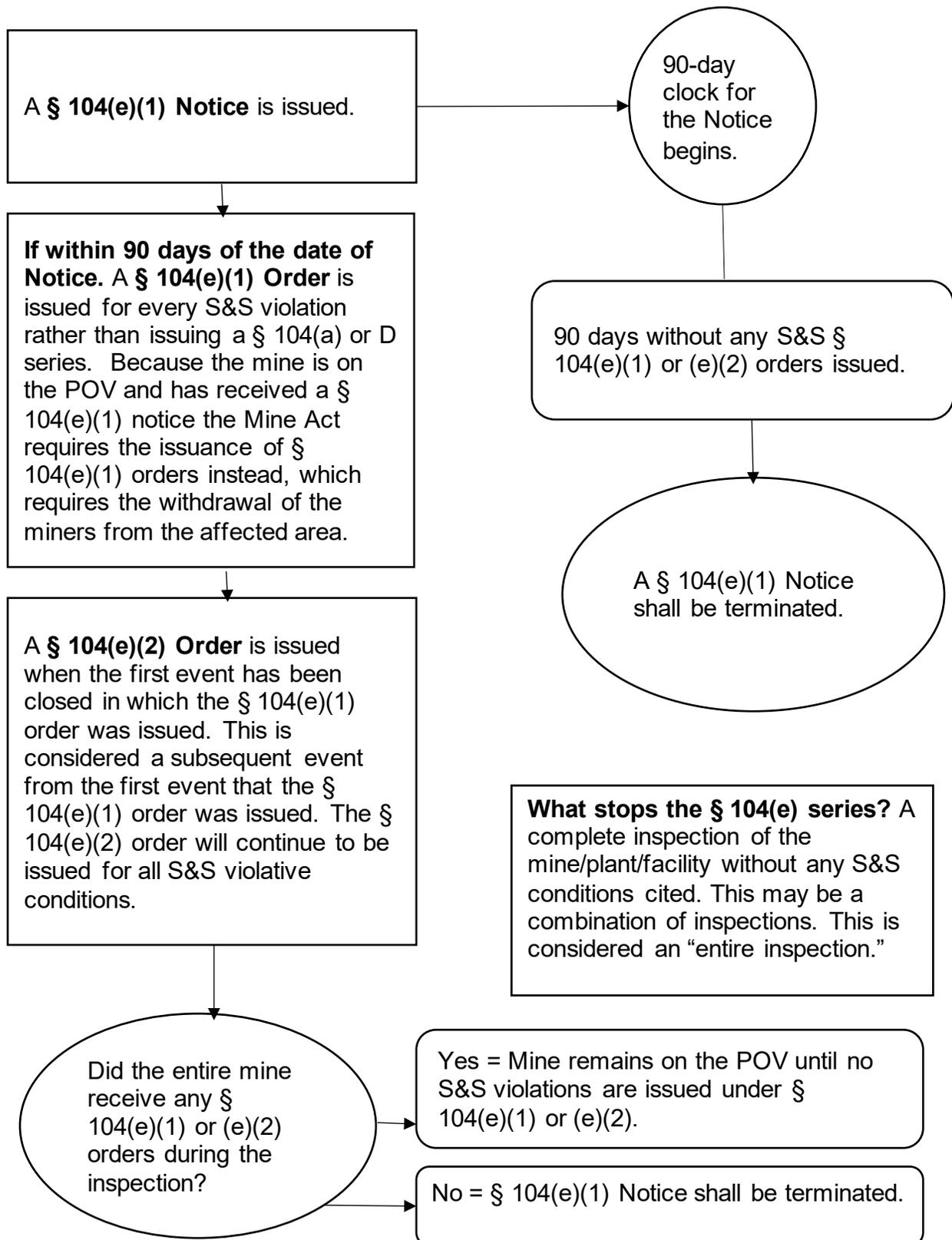
**Item 15.** Describe and clearly identify the "Area or Equipment" affected.

**Item 16.** Do not complete.

## Sample Section 104(e)(2) Order of Withdrawal

Mine Citation/Order		<b>U.S. Department of Labor</b> Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 3/6/2023	2. Time (24 Hr. Clock) 0812		3. Citation/ Order Number 7654335
4. Served To Jane Doe, Mine Manager			5. Operator Academy Mining Company, Inc.	
6. Mine Blue Falcon #2 Mine			7. Mine ID 76-01254 (Contractor)	
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>The mine operator failed to guard the Dodge couplers connecting the speed reducer to both electrical motors to the gearbox on the drive roller on the #4C conveyor belt drive take-up unit. The exposed rotating couplers are located on the side of the speed reducer adjacent to the walkway, where a miner could easily trip and fall into the rotating couplers causing serious entanglement injuries to themselves. This belt conveyor was operating at the time this observation was cited.</p> <p>"A Notice of Pattern of Violations, (7654333) was issued on (2/15/2023)."</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 75.1722(a)	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input checked="" type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104(e)(2)		13. Type of Issuance (check one) Citation <input type="checkbox"/> Order <input checked="" type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action				
A. Citation <input type="checkbox"/> B. Order <input checked="" type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>		E. Citation/ Order Number 7654334		F. Dated Mo Da Yr 2/20/2023
15. Area or Equipment The #4C conveyor belt from head to tail.				
16. Termination Due				
A. Date Mo Da Yr		B. Time (24 Hr. Clock)		
Section III--Termination Action				
17. Action to Terminate A guard for the Dodge coupler has been installed in a workmanlike manner. It is securely fastened into place.				
18. Terminated				
A. Date Mo Da Yr 3/6/2023		B. Time (24 Hr. Clock) 1222		
Section IV--Automated System Data				
19. Type of Inspection (activity code) E01		20. Event Number 1234572		21. Primary or Mill
22. AR Name Copper Pot				23. AR Number 12345
MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.				

## Section 104(e) Series Enforcement Actions Process



### **Section 104(e)(3): Actions to Terminate the Notice**

If an MSHA inspection of the entire mine finds no S&S violations of mandatory standards, the District Manager shall terminate the POV notice. However, a mine operator can reestablish a POV status if MSHA finds subsequent S&S violations.

Section 104(e)(3) of the Mine Act states the following, "If, upon an inspection of the entire coal or other mine, an authorized representative of the Secretary finds no violation of mandatory health or safety standards that could significantly and substantially contribute to the cause and effect of a coal or other mine health and safety hazard, the pattern of violations that resulted in the issuance of the notice under paragraph (1) shall be deemed to be terminated and the provisions of paragraphs (1) and (2) shall no longer apply. However, if as a result of subsequent violations, the operator establishes a pattern of violations, paragraphs (1) and (2) shall again be applicable to such operator."

### **Form 7000-3 Guidance: Section 104(e)(3)**

Use a Mine Citation/Order Continuation Form 7000-3a and the initial Notice number from the POV sequence to terminate a POV notice.

**Note:** Ensure the subject mine has been inspected in its entirety.

#### **CAUTION**

The District Manager must consult the Regional Solicitor or SOL-MSH prior to terminating the POV notice.
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Use the termination language provided in the termination with changes as required:

"<Mine ID> Mine underwent an inspection of the entire mine which was completed on <date> without being cited for a violation that could significantly contribute to the cause and effect of a mine safety or health hazard. Therefore, the mine is no longer subject to orders of withdrawal issued pursuant to Section 104(e) of the Federal Mine Safety and Health Act of 1977. Accordingly, the Notice of Pattern of Violations is terminated."

## Sample Section 104(e)(3) – Termination

Mine Citation/Order Continuation									
Section I—Subsequent Action/Continuation Data									
1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/> <input type="checkbox"/>	2. Dated (Original Issue)	Mo	Da	Yr	3. Citation/Order Number	7654333 - 01			
4. Served To Jane Doe, Mine Manager				5. Operator Academy Mining Company, Inc.					
6. Mine Blue Falcon #2 Mine				7. Mine ID (Contractor) 76-01254					
Section II—Justification for Action									
<p>(7601254) mine underwent an inspection of the entire mine which was completed on (3/27/2023) without being cited for a violation which could significantly and substantially contribute to the cause and effect of a mine safety and health hazard. Therefore, the mine is no longer subject to orders of withdrawal issued pursuant to Section 104(e) of the Federal Mine Safety and Health Act of 1977. Accordingly, the Notice of Pattern of Violations is terminated.</p>									
Section III—Subsequent Action Taken									
8. Extended To		A. Date	Mo	Da	Yr	B. Time (24 Hr. Clock)	<input type="checkbox"/> C. Vacated	<input checked="" type="checkbox"/> D. Terminated	<input type="checkbox"/> E. Modified
Section IV—Inspection Data									
9. Type of Inspection E01			10. Event Number 1234572						
11. AR Name Copper Pot		AR Number 12345		12. Date 03/27/2023		13. Time (24 Hr. Clock) 12:31			
MSHA Form 7000-3a, Mar 85 (revised)									

## **Section 104(g)(1): Orders of Withdrawal**

Section 104(g)(1) of the Mine Act provides for the withdrawal of untrained miners from a mine or mill until they have received the required training pursuant to § 115 of the Mine Act. The purpose of a § 104(g)(1) order is to eliminate the hazard that untrained or inadequately trained miners pose to themselves and to other miners. The inspector shall evaluate § 104(g)(1) orders for “S&S” using the criteria in Chapter 1.

When citing for untrained miners under § 104(g)(1):

- **Underground Mines (Part 48).** MSHA can cite only §§ 48.5, .6, .7, .8, and 11.
- **Surface Mines and Surface Areas of Underground Mines (Part 48).** MSHA can cite only §§ 48.25, .26, .27, .28, and 31.
- **Surface Mines (Part 46).** MSHA can cite only §§ 46.5, .6, .7, .8, and 11.

MSHA shall **not** issue citations in lieu of § 104(g)(1) orders **unless** the miner cannot be trained because the miner is no longer employed at the mine, was permanently disabled, or was fatally injured.

When miners have received training but there are violations involving training plans, cooperative training programs, records of training, compensation for training, adequacy of training, etc., the inspector should not issue § 104(g)(1) orders of withdrawal. In these situations, the inspector should issue a § 104(a) citation or a § 104(d) citation or order.

An inspector shall issue a § 104(g)(1) order of withdrawal for the following categories of untrained miners:

- New miners,
- Experienced or newly hired experienced miners,
- Miners assigned to perform a task for which they have had no prior experience,
- Miners whose annual refresher training is not up to date, and
- Miners or applicable persons working on mine property who have not received hazard training.

## Violations Involving One Miner

If only one miner is involved, but the mine operator has violated two or more sections of Part 46 or Part 48, issue one § 104(g)(1) order and cite the standard that would have the most serious immediate consequences for the miner.

For example, failure to task train a miner operating an unfamiliar piece of equipment may have a greater immediate consequence to the health and safety of the untrained miner than the lack of annual refresher training. However, the inspector should include a description of all violations in the condition or practice portion of the order to ensure the operator has complied with all training deficiencies prior to terminating the order.

**Example:** One underground miner was found not task trained and had not received annual refresher training. Issue only one § 104(g)(1) order for the failure to provide task training. However, the Item 8 narrative should include a description of both violations.

## Violations Involving More Than One Miner

Use the following descriptions when determining withdrawal actions for § 104(g)(1) violations involving more than one untrained miner:

- Issue a single § 104(g)(1) order if the Part 46 or Part 48 training violation is the same for all the miners.
- Issue one or more § 104(g)(1) orders, depending on the circumstances, if there are different violations of the training requirements for each miner.

**Example:** Eight underground miners lacked the requisite safety training (three did not receive new miner training, two were not task trained, and three missed annual refresher training). The inspector would issue three separate § 104(g)(1) orders: one for a violation of 30 C.F.R. § 48.5; one for a violation of 30 C.F.R. § 48.7; and one for a violation of 30 C.F.R. § 48.8.

**Note:** For each violation, list the untrained miners' names in Item 15 "Area or Equipment."

When multiple miners are involved in a violation of the same standard, enter the total number of miners withdrawn in Item 10D "Number of Persons Affected" and list each miner's name in Item 15 "Area or Equipment."

The inspector can modify a § 104(g)(1) order that lists multiple miners to allow individual miners to return to work as soon as the miner completes the training specified in the order.

## Violations Involving Independent Contractors

MSHA would issue a § 104(g)(1) order of withdrawal to the direct employer of any miner who has not received the required training. If there is uncertainty as to who employs a specific miner, issue the order to the operator with the greatest physical presence at the mine. After the miner is withdrawn, the inspector can resolve any discrepancies through subsequent modification actions.

## Citations Issued with Section 104(g)(1) Orders

Except in instances of overlapping compliance responsibility between contractors and mine operators, an inspector shall not issue citations in addition to § 104(g)(1) orders for the same violation. However, there may be circumstances where it is appropriate to issue citations or orders for training violations to both the independent contractor and the mine operator.

**Example:** A miner is the employee of an independent contractor and the mine operator had agreed to provide the miner training in accordance with the mine's MSHA-approved training plan. However, the operator failed to ensure that the miner received the required training. The inspector would issue a § 104(g)(1) order to the independent contractor, and as appropriate, a § 104(a) citation, § 104(d)(1) citation, § 104(d)(1) order, or a § 104(d)(2) order to the mine operator.

## Form 7000-3 Guidance: Section 104(g)(1) Orders of Withdrawal

**Item 8.** Describe the hazard and clearly state the prohibited activity. Include the statement “The Federal Mine Safety and Health Act of 1977 declares that untrained miner(s) are a hazard to themselves and others.”

**Item 9C.** Enter the first standard cited.

**Item 12.** Select “104(g)(1).”

**Item 13.** Select “Order.”

**Item 15.** List the miner(s) to be withdrawn.

**Item 16.** Do not complete.

# Sample Section 104(g)(1) Order – Annual Retraining Part 48

Mine Citation/Order

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



Section I--Violation Data

1. Date Mo Da Yr 3/27/2023	2. Time (24 Hr. Clock) 0615	3. Citation/ Order Number 7654336
4. Served To Jane Doe, Mine Manager		5. Operator Academy Mining Company, Inc.
6. Mine Cornish Mine		7. Mine ID 76-01111 (Contractor)
8. Condition or Practice		8a. Written Notice (103g) <input type="checkbox"/>

A truck driver operating a red Peterbilt 18-wheeler, Colorado Tag #BR5490 did not receive the required annual refresher training for 2022. The annual retraining documentation provided by the mine operator was dated 10/20/2021. The training has elapsed. The mine operator must withdraw the truck driver from the property until the required annual retraining has been completed. The Federal Mine Safety and Health Act of 1977 declares that an untrained miner is a hazard to themselves and others. Each miner shall receive a minimum of 8 hours of annual refresher training as prescribed.

See Continuation Form (MSHA Form 7000-3a)

9. Violation	A. Health Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 48.28 (a)
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Section II--Inspector's Evaluation

10. Gravity:

A. Injury or Illness (has) (is): No Likelihood  Unlikely  Reasonably Likely  Highly Likely  Occurred

B. Injury or illness could reasonably be expected to be: No Lost Workdays  Lost Workdays Or Restricted Duty  Permanently Disabling  Fatal

C. Significant and Substantial: Yes  No  D. Number of Persons Affected: 001

11. Negligence (check one) A. None  B. Low  C. Moderate  D. High  E. Reckless Disregard

12. Type of Action 104 (g) (1) 13. Type of Issuance (check one) Citation  Order  Safeguard  Written Notice

14. Initial Action A. Citation  B. Order  C. Safeguard  D. Written Notice  E. Citation/Order Number F. Dated Mo Da Yr

15. Area or Equipment

John J. Doe, Truck Driver of the Peterbilt tractor and trailer Colorado Tag Br5490

16. Termination Due	A. Date Mo Da Yr	B. Time (24 Hr. Clock)
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Section III--Termination Action

17. Action to Terminate

18. Terminated	A. Date Mo Da Yr	B. Time (24 Hr. Clock)
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Section IV--Automated System Data

19. Type of Inspection (activity code) E01	20. Event Number 1234573	21. Primary or Mill
22. AR Name Copper Pot		23. AR Number 12345

MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.

## Sample Section 104(g)(1) Order – Single Miner and a Single Violation Part 48

Mine Citation/Order		<b>U.S. Department of Labor</b> Mine Safety and Health Administration	
Section I--Violation Data			
1. Date	Mo Da Yr 3/24/2023	2. Time (24 Hr. Clock) 1240	3. Citation/ Order Number 7654339
4. Served To Jane Doe, Mine Manager		5. Operator Academy Mining Company, Inc.	
6. Mine Cornish Mine		7. Mine ID 76-01111 (Contractor)	
8. Condition or Practice			8a. Written Notice (103g) <input type="checkbox"/>
<p>Michael Martin (Payroll Number 123456), a temporary summer employee, had not received the required MSHA 40-hour new miner training prior to performing maintenance duties underground. The mine operator was aware of the Part 48 training requirements but believed it was unnecessary for a temporary employee. Mr. Martin had no previous mining experience. The operator is hereby ordered to withdraw Michael Martin from the mine until he has received the required training. The Federal Mine Safety and Health Act of 1977 declares that an untrained miner is a hazard to himself and to others.</p>			
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>			
9. Violation	A. Health Safety <input checked="" type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 48.5 (b)
Section II--Inspector's Evaluation			
10. Gravity:			
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>			
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input checked="" type="checkbox"/>			
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>			
12. Type of Action 104 (g) (1)		13. Type of Issuance (check one) Citation <input type="checkbox"/> Order <input checked="" type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>	
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			E. Citation/ Order Number
15. Area or Equipment Michael Martin (Payroll Number: 123456)			F. Dated Mo Da Yr
16. Termination Due		A. Date Mo Da Yr	B. Time (24 Hr. Clock)
Section III--Termination Action			
17. Action to Terminate			
18. Terminated		A. Date Mo Da Yr	B. Time (24 Hr. Clock)
Section IV--Automated System Data			
19. Type of Inspection (activity code) E01		20. Event Number 1234573	
22. AR Name Copper Pot		23. AR Number 12345	
MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.			

# Sample Section 104(g)(1) Order – Untrained Miner Part 48

Mine Citation/Order		<b>U.S. Department of Labor</b> Mine Safety and Health Administration		
<b>Section I--Violation Data</b>				
1. Date	Mo Da Yr 3/27/2023	2. Time (24 Hr. Clock)	1253	
4. Served To		Jane Doe, Mine Manager		3. Citation/ Order Number
				7654340
5. Operator		Academy Mining Company, Inc.		
6. Mine		Cornish Mine		7. Mine ID
				76-01111 (Contractor)
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
Standard 48.5(a) was cited 1 time in two years at mine 7601111 (1 to the operator, 0 to a contractor).  John Jones was performing laborer duties in the mains section conveyor belt entry in the underground portion of the mine. He has not received the safety training as required by Section 115 of the Act. Mr. Jones is a new miner, hired by this company on 8/13/08. He has received none of the required 40 hours of new miner training. In the absence of such training, John Jones is declared a hazard to himself and others and is to be withdrawn immediately from the mine until he has received the required training, as determined by an Authorized Representative.  (If a miner has not received training in violation of 2 or more of the training regulations, a single Order is issued; however, each additional violation is given an inspector's evaluation on a Form 7000-3a.)				
See Continuation Form (MSHA Form 7000-3a) <input checked="" type="checkbox"/>				
9. Violation	A. Health Safety <input checked="" type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR	
			48.5 (a)	
<b>Section II--Inspector's Evaluation</b>				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input checked="" type="checkbox"/>				
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action		13. Type of Issuance (check one)		
104 (g) (1)		Citation <input type="checkbox"/> Order <input checked="" type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action		E. Citation/Order Number		F. Dated Mo Da Yr
A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>				
15. Area or Equipment				
John Jones, Laborer is withdrawn from the mine.				
16. Termination Due		A. Date Mo Da Yr		
		B. Time (24 Hr. Clock)		
<b>Section III--Termination Action</b>				
17. Action to Terminate				
18. Terminated		A. Date Mo Da Yr		
		B. Time (24 Hr. Clock)		
<b>Section IV--Automated System Data</b>				
19. Type of Inspection (activity code)		20. Event Number		21. Primary or Mill
E01		1234573		
22. AR Name				23. AR Number
Copper Pot				12345
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>				

# Sample Section 104(g)(1) Order – Multiple Miners and a Single Violation Part 48

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 3/27/2023	2. Time (24 Hr. Clock) 1343	3. Citation/ Order Number	7654341
4. Served To	Jane Doe, Mine Manager		5. Operator	Academy Mining Company, Inc.
6. Mine	Cornish Mine		7. Mine ID	76-01111 (Contractor)
8. Condition or Practice			8a. Written Notice (103g) <input type="checkbox"/>	
<p>Fifty-six miners working in the mine and mill have not received annual refresher training within the last twelve months. Refresher training was last given to these miners on February 10, 2007. The mine operator was aware of the training requirements. The safety director said, "the production schedule has been too tight to work in the training." The operator is hereby ordered to withdraw the 56 miners from the mine or mill until they have received the required training. The Federal Mine Safety and Health Act of 1977 declares that an untrained miner is a hazard to himself and to others.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health <input type="checkbox"/> Safety <input checked="" type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR	48.8
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input checked="" type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input checked="" type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			D. Number of Persons Affected: 056	
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input checked="" type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action		13. Type of Issuance (check one)		
104 (g) (1)		Citation <input type="checkbox"/> Order <input checked="" type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action				F. Dated
A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>				Mo Da Yr
15. Area or Equipment				
Ben Hopper, Karen Jones, list all 56 names here.				
16. Termination Due		A. Date	Mo Da Yr	B. Time (24 Hr. Clock)
Section III--Termination Action				
17. Action to Terminate				
18. Terminated		A. Date	Mo Da Yr	B. Time (24 Hr. Clock)
Section IV--Automated System Data				
19. Type of Inspection (activity code)		20. Event Number		21. Primary or Mill
E01		1234573		
22. AR Name				23. AR Number
Copper Pot				12345
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>				

# Sample Section 104(g)(1) Order – Single Miner and Multiple Violations Part 48

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 3/27/2023	2. Time (24 Hr. Clock)	1408	
3. Citation/Order Number	7654342			
4. Served To	Jane Doe, Mine Manager		5. Operator Academy Mining Company, Inc.	
6. Mine	Cornish Mine		7. Mine ID 76-01111 (Contractor)	
8. Condition or Practice			8a. Written Notice (103g) <input type="checkbox"/>	
<p>Jim Jones, an underground driller working in the mine, had not received task training on the jackleg drill he was operating prior to assuming work duties on June 16, 2008. (48.8) Mr. Jones had started the drill only two hours prior to this order being written. He indicated that he had not received any training. Jim Jones had also not received annual refresher training within the last twelve months. Mr. Jones' last MSHA training was received on 1/13/08. Mr. Jones had no previous mining experience prior to beginning work at this mine on January 8, 2008. The mine operator was aware of the training requirements. The safety director said, "the production schedule has been too tight to work in the training." The Federal Mine Safety and Health Act of 1977 declares an untrained miner a hazard to himself and others.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health Safety Other <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 48.7	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input checked="" type="checkbox"/>				
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input checked="" type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104 (g) (1)		13. Type of Issuance (check one) Citation <input type="checkbox"/> Order <input checked="" type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>		E. Citation/Order Number		F. Dated Mo Da Yr
15. Area or Equipment Jim Jones (payroll No. 31234567)				
16. Termination Due		A. Date Mo Da Yr	B. Time (24 Hr. Clock)	
Section III--Termination Action				
17. Action to Terminate				
18. Terminated		A. Date Mo Da Yr	B. Time (24 Hr. Clock)	
Section IV--Automated System Data				
19. Type of Inspection (activity code) E01		20. Event Number 1234573		21. Primary or Mill
22. AR Name Copper Pot			23. AR Number 12345	
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>				

# Sample Section 104(a) Citation – Inadequate Training Plan Part 46

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 3/24/2023	2. Time (24 Hr. Clock)	1421	
4. Served To		5. Operator		
John Doe, Owner		Academy Mining Company		
6. Mine	7. Mine ID		(Contractor)	
Blue Falcon Sand and Gravel Mine	76-54312			
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>The training plan did not include the minimum information specified in 30 CFR Part 46.3 (b) (1) through 46.3 (b) (5), nor has the plan been submitted to MSHA for approval.                  The following items contribute to the ineffectiveness of the plan:                  There was not a general description of the teaching methods to be used.                  No approximate time range was given for the subject areas to be covered.                  No evaluation procedures were included to determine the effectiveness of the training.                  No course material was provided for training new miners in recognizing and avoiding electrical and other hazards at the mine.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR	
			46.3 (a)	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input checked="" type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input checked="" type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>				D. Number of Persons Affected: 012
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action		13. Type of Issuance (check one)		
104 (a)		Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action		E. Citation/Order Number		F. Dated
A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>				Mo Da Yr
15. Area or Equipment				
16. Termination Due				
A. Date	Mo Da Yr 3/31/2023	B. Time (24 Hr. Clock)	1421	
Section III--Termination Action				
17. Action to Terminate				
18. Terminated				
A. Date	Mo Da Yr	B. Time (24 Hr. Clock)		
Section IV--Automated System Data				
19. Type of Inspection (activity code)	20. Event Number		21. Primary or Mill	
E01	1234567		P	
22. AR Name			23. AR Number	
Copper Pot			12345	
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>				

## Sample Section 104(a) Citation – Training Certification Not Provided Part 46

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 3/24/2023	2. Time (24 Hr. Clock) 1433		3. Citation/ Order Number 7654344
4. Served To John Doe, Owner			5. Operator Academy Mining Company	
6. Mine Blue Falcon Sand and Gravel Mine			7. Mine ID 76-54312 (Contractor)	
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
Miners were not provided a copy of a certified training record upon completion of their new miner training.				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health Safety Other <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 46.9 (d) (1)	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input checked="" type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input checked="" type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>				D. Number of Persons Affected: 000
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104 (a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			E. Citation/ Order Number	
15. Area or Equipment				
16. Termination Due				
A. Date	Mo Da Yr 3/31/2023	B. Time (24 Hr. Clock) 1433		
Section III--Termination Action				
17. Action to Terminate				
18. Terminated				
A. Date	Mo Da Yr	B. Time (24 Hr. Clock)		
Section IV--Automated System Data				
19. Type of Inspection (activity code)	E01	20. Event Number 1234567	21. Primary or Mill P	
22. AR Name Copper Pot			23. AR Number 12345	
MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.				

## Sample Section 104(a) Citation – Incomplete Training Records Part 46

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 3/27/2023	2. Time (24 Hr. Clock) 1440		3. Citation/ Order Number 7654345
4. Served To John Doe, Owner			5. Operator Academy Mining Company	
6. Mine Blue Falcon Sand and Gravel Mine			7. Mine ID 76-54312 (Contractor)	
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
The mine operator was not completing or generating the required records of training which were being completed in segments [30 CFR 46.9b(1-4)].				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 46.9 (b)	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input checked="" type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input checked="" type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>				D. Number of Persons Affected: 000
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104 (a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			E. Citation/ Order Number	
15. Area or Equipment				
16. Termination Due				
A. Date	Mo Da Yr 3/29/2023	B. Time (24 Hr. Clock) 1440		
Section III--Termination Action				
17. Action to Terminate				
18. Terminated				
A. Date	Mo Da Yr	B. Time (24 Hr. Clock)		
Section IV--Automated System Data				
19. Type of Inspection (activity code)	E01	20. Event Number 1234567	21. Primary or Mill P	
22. AR Name Copper Pot			23. AR Number 12345	
MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.				

## Sample Section 104(a) Citation – Training Records Not Provided Part 46

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 3/27/2023	2. Time (24 Hr. Clock) 1447		3. Citation/ Order Number 7654346
4. Served To John Doe, Owner			5. Operator Academy Mining Company	
6. Mine Blue Falcon Sand and Gravel Mine			7. Mine ID 76-54312 (Contractor)	
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
The mine operator failed to record and certify that each miner had received the required training.				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 46.9 (a)	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input checked="" type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input checked="" type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>				D. Number of Persons Affected: 000
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104 (a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			E. Citation/ Order Number	
15. Area or Equipment				
16. Termination Due				
A. Date	Mo Da Yr 4/3/2023	B. Time (24 Hr. Clock) 1447		
Section III--Termination Action				
17. Action to Terminate				
18. Terminated				
A. Date	Mo Da Yr	B. Time (24 Hr. Clock)		
Section IV--Automated System Data				
19. Type of Inspection (activity code)	E01	20. Event Number 1234567	21. Primary or Mill P	
22. AR Name Copper Pot			23. AR Number 12345	
MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.				

## Sample Section 104(g)(1) Order – Single Miner and a Single Violation Part 46

Mine Citation/Order		<b>U.S. Department of Labor</b> Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 3/28/2023	2. Time (24 Hr. Clock) 1455	3. Citation/ Order Number	7654347
4. Served To John Doe, Owner		5. Operator Academy Mining Company		
6. Mine Blue Falcon Sand and Gravel Mine		7. Mine ID 76-54312 (Contractor)		
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>Nancy Doe (payroll number 98342), a truck driver, had not received the MSHA-required 24-hour new miner training within 90 days after beginning work at the mine. Miss. Doe had no previous mining experience, and he was only provided with 8 hours of training. The mine operator was aware of the Part 46 training requirements. The mine operator must withdraw Nancy Doe from the mine until he receives the required training. The Federal Mine Safety and Health Act of 1977 states that an untrained miner is a hazard to himself and to others.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR  46.5	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input checked="" type="checkbox"/>				
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input checked="" type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104 (g) (1)		13. Type of Issuance (check one) Citation <input type="checkbox"/> Order <input checked="" type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>		E. Citation/ Order Number		F. Dated Mo Da Yr
15. Area or Equipment Nancy Doe, (Payroll number 98342)				
16. Termination Due		A. Date Mo Da Yr	B. Time (24 Hr. Clock)	
Section III--Termination Action				
17. Action to Terminate				
18. Terminated		A. Date Mo Da Yr	B. Time (24 Hr. Clock)	
Section IV--Automated System Data				
19. Type of Inspection (activity code) E01		20. Event Number 1234567		21. Primary or Mill P
22. AR Name Copper Pot			23. AR Number 12345	
MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.				

# Sample Section 104(g)(1) Order – Multiple Miners and a Single Violation Part 46

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 3/27/2023	2. Time (24 Hr. Clock)	1507	
4. Served To		5. Operator		
John Doe, Owner		Academy Mining Company		
6. Mine	7. Mine ID		(Contractor)	
Blue Falcon Sand and Gravel Mine	76-54312			
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>Twenty-two miners working at the mine have not received annual refresher training within the last twelve months. Refresher training was last provided to these miners on April 11, 2007. The mine operator was aware of the training requirements. The mine operator must withdraw the 22 miners from the mine until they have received the required training. The Federal Mine Safety and Health Act of 1977 states that an untrained miner is a hazard to himself and to others.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health Safety Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR	
			46.8	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input checked="" type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input checked="" type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>				D. Number of Persons Affected: 022
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input checked="" type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action		13. Type of Issuance (check one)		
104 (g) (1)		Citation <input type="checkbox"/> Order <input checked="" type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action		E. Citation/ Order Number		F. Dated Mo Da Yr
A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>				
15. Area or Equipment				
John Doe, List all 22 peoples name here.				
16. Termination Due		A. Date Mo Da Yr		
		B. Time (24 Hr. Clock)		
Section III--Termination Action				
17. Action to Terminate				
18. Terminated		A. Date Mo Da Yr		
		B. Time (24 Hr. Clock)		
Section IV--Automated System Data				
19. Type of Inspection (activity code)		20. Event Number		21. Primary or Mill
E01		1234567		P
22. AR Name				23. AR Number
Copper Pot				12345
<p><small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small></p>				

## Sample Section 104(g)(1) Order – Single Miner and Multiple Violations Part 46

Mine Citation/Order		<b>U.S. Department of Labor</b> Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 3/28/2023	2. Time (24 Hr. Clock) 0720		3. Citation/ Order Number 7654349
4. Served To John Doe, Owner			5. Operator Academy Mining Company	
6. Mine Blue Falcon Sand and Gravel Mine			7. Mine ID 76-54312 (Contractor)	
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>The driver of the number 24 haul truck (Payroll 98340) had not received new task training on the haul truck he was operating prior to assuming his duties on October 5, 2022. [30 CFR 46.7(a)] The driver stated he had not operated any haul trucks prior to this date, including before beginning employment at this mine on January 15, 2022. This driver should have received annual refresher training no later than 12 months after beginning work at the mine (January 31, 2023), but did not. [30 CFR 46.8(a)(1)]</p> <p>The mine operator was aware of the lack of both new task training and annual refresher training, but no actions were taken to prevent or eliminate the condition. The Mine Safety and Health Act of 1977 declares an untrained miner is a hazard to himself and others. Exposure to mining hazards without proper training substantially increases the risk and likelihood of danger to miners.</p>				
				See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 46.7 (a)	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input checked="" type="checkbox"/>				
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			D. Number of Persons Affected: 001	
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input checked="" type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104 (g) (1)		13. Type of Issuance (check one) Citation <input type="checkbox"/> Order <input checked="" type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			E. Citation/ Order Number	
F. Dated Mo Da Yr				
15. Area or Equipment Driver of the Number 24 Haul Truck (Payroll 98340)				
16. Termination Due		A. Date Mo Da Yr	B. Time (24 Hr. Clock)	
Section III--Termination Action				
17. Action to Terminate				
18. Terminated		A. Date Mo Da Yr	B. Time (24 Hr. Clock)	
Section IV--Automated System Data				
19. Type of Inspection (activity code) E01		20. Event Number 1234567		21. Primary or Mill P
22. AR Name Copper Pot			23. AR Number 12345	
MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.				

## Section 107(a): Order of Withdrawal – Imminent Danger

**Imminent danger** is the existence of any condition or practice in a mine that could reasonably be expected to cause death or serious physical harm to a miner if normal mining operations continue before the dangerous condition is eliminated.

An imminent danger withdrawal order shall have a detailed description of the conditions or practices that cause and constitute the imminent danger and a description of the mine, or area of the mine, from which persons must be withdrawn and prohibited from entering. Only those persons described in § 104(c) of the Mine Act may enter the affected area while the order is in place.

An imminent danger withdrawal order often arises because of a violation of the Mine Act and its mandatory health or safety standards. Issuing an imminent danger order does not prevent issuing § 104(d) series enforcement actions. Address all violations that caused or contributed to the imminent danger as separate citations or orders and refer to the § 107(a) imminent danger order of withdrawal.

- Unless the danger still exists, an inspector cannot issue an imminent danger withdrawal order for an accident that has already occurred.
- An inspector does not have to witness the immediate physical exposure to the imminent danger to issue a § 107(a) order.
- A § 107(a) order immediately removes miners from exposure to a serious hazard that must exist at the time the inspector issues the order. When an inspector sees an imminent danger, the inspector immediately issues an “Oral 107(a) Order,” to withdraw the exposed miner(s) from danger.

**Note:** Document an “Oral 107(a) Order” in the field notes as soon as practical.

### CAUTION

The appropriate District Manager shall approve the vacating of all § 107(a) Orders to ensure proper coordination and documentation.

## Form 7000-3 Guidance: Section 107(a) Imminent Danger Order of Withdrawal

**Item 8.** In addition to the narrative description, there are two required statements:

1. An oral imminent danger was issued to <recipient’s full name>, <recipient’s title>, <time issued>, <location>, and <reason for issuing>.

2. This condition is an imminent danger.
- Item 9.** Do not complete.
- Item 10.** Do not complete.
- Item 11.** Do not complete.
- Item 12.** Select “107(a).”
- Item 13.** Select “Order.”
- Item 14.** Do not complete.
- Item 15.** Describe and clearly identify the “Area or Equipment” affected.
- Item 16.** Do not complete.
- Item 17.** Describe the actions taken to terminate the condition.
- Item 18.** Enter the termination date and time, if terminated.

# Sample Section 107(a) Order of Withdrawal – Imminent Danger

Mine Citation/Order		<b>U.S. Department of Labor</b> Mine Safety and Health Administration	
<b>Section I--Violation Data</b>			
1. Date	Mo Da Yr 2/8/2023	2. Time (24 Hr. Clock)	0653
3. Citation/ Order Number	8533280		
4. Served To	Shane Cornish, Mine Manager		5. Operator Cornish Mining Company, LLC.
6. Mine	Cornish Mine		7. Mine ID 05-01234 (Contractor)
8. Condition or Practice		8a. Written Notice (103g) <input type="checkbox"/>	
<p>An oral 107(a) imminent danger order was issued to Shane Cornish, the mine manager at the jaw crusher at the mill at 06:53 AM, this morning for the following reasons:</p> <p>The welder was observed inside the jaw crusher hard facing (welding) the wear plates. The crusher's counterbalance wheel was not secured with the locking mechanism to prevent the accidental movement of the jaw plates. This condition exposed the welder to a potentially fatal injury by crushing him between the wear plates; if the counterbalance wheel were to cam-over and cause the jaw to move back and forth. This condition constituted an imminent danger to the welder. The mine manager immediately withdrew the welder from the crusher and instructed the welder to secure the counterbalance by locking it into place.</p> <p>A separate citation for a violation of 30 CFR 77.404(c). Citation No. (8533281) is being issued in conjunction with this order.</p>			
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>			
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR
<b>Section II--Inspector's Evaluation</b>			
10. Gravity:			
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>			
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>			
C. Significant and Substantial: Yes <input type="checkbox"/> No <input type="checkbox"/>			D. Number of Persons Affected:
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>			
12. Type of Action		13. Type of Issuance (check one)	
107 (a)		Citation <input type="checkbox"/> Order <input checked="" type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>	
14. Initial Action		E. Citation/ Order Number	
A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>		F. Dated Mo Da Yr	
15. Area or Equipment John Doe, the welder.			
16. Termination Due		B. Time (24 Hr. Clock)	
A. Date Mo Da Yr			
<b>Section III--Termination Action</b>			
17. Action to Terminate The mine manager withdrew the welder from the jaw crusher.			
18. Terminated		B. Time (24 Hr. Clock)	
A. Date Mo Da Yr 2/8/2023		0654	
<b>Section IV--Automated System Data</b>			
19. Type of Inspection (activity code)		20. Event Number	
E01		4262847	
22. AR Name		21. Primary or Mill	
		23. AR Number	

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## Section 104(a) Citation in Conjunction with a Section 107(a) Order of Withdrawal

Issue a § 104(a) citation(s) in conjunction with a § 107(a) order when a violation of a mandatory standard caused or contributed to the imminent danger. Describe the condition(s) or practice(s) that created the imminent danger situation and why the risk of hazard will occur before it can be remedied. In most cases, it will mirror the description of the § 107(a) order.

### Form 7000-3 Guidance: Section 104(a) Citation in Conjunction with a Section 107(a) Order

**Item 8.** The inspector should add the following statement in the Item 8 narrative:

“This citation was issued for the following condition that was a contributing factor to the issuance of the Imminent Danger Order No. <order number> dated <order date>. Therefore, no abatement time was set.”

**Item 10.** Enter “Highly Likely.” (This is due to the dangerous condition which caused the § 107(a) order.)

#### Related Order Number

When entering a § 104(a) citation in IAS to issue in conjunction with a § 107(a) order, the inspector **must** connect the citation to the imminent danger withdrawal order through the “Related Order Number” block using the drop-down menu (see graphic below). The drop-down menu will allow selecting the relevant Imminent Danger withdrawal order number, linking the two and allowing IAS to issue the § 104(a) citation without a Termination Due Date.

**Note:** This “Related Order Number” block is visible only in IAS and is only for issuing the § 104(a) or § 104(d) series in conjunction with a § 107(a) order. It will not appear on the final printed Mine Citation/Order form.

Related Order Number <input type="text"/>
--

#### Termination

Because the § 104(a) citation has no set termination due date and is linked to the § 107(a) order, the inspector must first terminate the § 104(a) citation or other enforcement action connected to the § 107(a) order. After terminating the § 104(a) citation (or other linked enforcement action), the inspector can then terminate the § 107(a) order.

## Sample Section 104(a) Citation Related to a Section 107(a) Order

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration	
<b>Section I--Violation Data</b>			
1. Date	Mo Da Yr 2/8/2023	2. Time (24 Hr. Clock) 0655	3. Citation/ Order Number 8533281
4. Served To	Shane Cornish, Mine Manager		5. Operator Cornish Mining Company, LLC.
6. Mine	Cornish Mine		7. Mine ID 05-01234 (Contractor)
8. Condition or Practice			8a. Written Notice (103g) <input type="checkbox"/>
<p>The counterbalance wheel was not secured before commencing work inside the jaw crusher. The welder was observed inside the jaw crusher hard facing (welding) the wear plates. The crusher's counterbalance wheel was not secured with the locking mechanism to prevent the accidental movement of the jaw plates. This condition exposed the welder to a potentially fatal injury by crushing him between the wear plates; if the counterbalance wheel were to cam-over and cause the jaw to move back and forth. This condition constituted an imminent danger to the welder. The mine manager immediately withdrew the welder from the crusher and instructed the welder to secure the counterbalance by locking it into place. Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion.</p> <p>This condition was a factor that contributed to the issuance of imminent danger order #8533280 dated 02/08/2023. Therefore, no abatement time was set.</p>			
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>			
9. Violation	A. Health <input type="checkbox"/> Safety <input checked="" type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 77.404 (c)
<b>Section II--Inspector's Evaluation</b>			
10. Gravity:			
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input checked="" type="checkbox"/> Occurred <input type="checkbox"/>			
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input checked="" type="checkbox"/>			
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>			
12. Type of Action 104 (a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>	
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>		E. Citation/ Order Number	F. Dated Mo Da Yr
15. Area or Equipment			
16. Termination Due		A. Date Mo Da Yr	B. Time (24 Hr. Clock)
<b>Section III--Termination Action</b>			
17. Action to Terminate The mine manager withdraw the welder from the jaw crusher. The counterbalance wheel was secured. The mine manager held a safety meeting with the crew and discussed the preventive measures that should have taken place prior to commencing their work.			
18. Terminated	A. Date Mo Da Yr 2/8/2023	B. Time (24 Hr. Clock) 0730	
<b>Section IV--Automated System Data</b>			
19. Type of Inspection (activity code)	E01	20. Event Number 4262847	21. Primary or Mill
22. AR Name		23. AR Number	
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>			

## Section 107(b)(1): Order – Notice

Although rarely used, § 107(b) of the Mine Act provides unique enforcement procedures and requirements to contend with the unusual circumstances of dangerous conditions that cannot be abated effectively using existing technology.

The inspector shall discuss any intent to employ this action with the first-line supervisor before issuing a § 107(b)(1) Order Notice. In addition, the inspector or District Manager must draft the language and content of the written notice with the help of the Administrator for Mine Safety and Health Enforcement and SOL-MSH to ensure it is consistent with MSHA policy and procedures.

### CAUTION

Inspectors or District Managers shall consult with the Administrator for Mine Safety and Health Enforcement **before** taking any action or issuing, modifying, terminating, or vacating orders under § 107(b). See the final paragraphs of Program Policy Manual, Volume 1, §§ 104(h) and 107(d) Vacating Citations and Orders for more information.

## **Section 110(g): Miners Smoking or Carrying Smoking Materials in Prohibited Areas**

According to § 110(g) of the Mine Act, any miner who willfully violates the mandatory safety standards relating to smoking or carrying smoking materials, matches, or lighters is subject to a civil penalty.

**Note:** Since smoking is not prohibited in all mines, the inspector should identify whether smoking is prohibited in the type of mine under inspection.

The inspector issues the § 110(g) notice directly to the miner who violated the prohibition of smoking or carrying smoking materials; the notice belongs to that miner. Because the notice is a § 110(g) and not from § 104 of the Mine Act, there is no set abatement date.

**Note:** A copy of the notice will be emailed to MSHA's Office of Assessments for a penalty to be proposed. The email will provide the last known personal address for the miner(s) so that the proposed assessment can be processed. This is a serious hazard. If there are any mitigating facts to be considered in proposing the penalty, the email shall so state. Note: The assessment has a statutory maximum.

### **Form 7000-3 Guidance: Section 110(g) Notice for Miners Smoking**

**Item 4.** Enter the miner's full name.

**Item 5.** Enter the operator's name.

**Item 6.** Enter the mine's name.

**Item 7.** Enter the Mine ID number.

**Item 8.** Describe the observed violation. Be sure to include the following statement at the end of the narrative: "This is a notification that <miner's full name> will receive a civil penalty for willfully violating a mandatory safety standard relating to smoking or the carrying of smoking materials, matches, or lighters."

**Item 9B.** Enter "110(g)".

**Item 9C.** Complete with one of the standards violated: 56/57.4100(a) or (b); 56/57.4502(b); 57.5041; 56/57.6904; 56/57.7805; 57.22101; 57.22102; 57.22105; 75.1702; or 77.1711.

**Items 10A-D.** Complete based on the determination made at the time of the observed violation.

**Item 11.** Negligence must be at least "High."

**Item 16.** Do not complete.

**Note:** Remember that this violation constitutes a serious hazard.

Give one copy of the completed notice to the cited miner(s).

Email a copy of the notice to MSHA's Office of Assessments to propose a penalty. In the email, be sure to provide:

- Any mitigating facts the Office of Assessments should consider when proposing the civil penalty.
- The last known personal address for the miner(s) to allow for processing of the proposed assessment.

The assessment has a statutory maximum that adjusts annually.

# Sample Section 110(g) Notice – Smoking in Prohibited Areas

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 3/28/2023	2. Time (24 Hr. Clock) 1030	3. Citation/ Order Number	7654350
4. Served To	Miner full name who had the smoking material		5. Operator	Academy Mining Company, Inc.
6. Mine	Blue Falcon #2 Mine		7. Mine ID	76-01254 (Contractor)
8. Condition or Practice			8a. Written Notice (103g) <input type="checkbox"/>	
<p>While inspecting the 4th West working section after a safety meeting with the underground mining crew a smoker's check was conducted by the foreman at MSHA request. During the search (Miner's full Name), was in possession of four cigarettes, two used cigarette butts, and a cigarette lighter in a prohibited area. This mine is on a five-day spot of methane liberation. This is a notification that (miner's full name) will receive a civil penalty for willfully violating a mandatory safety standard relating to smoking or the carrying of smoking materials, matches, or lighters.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act 110 (g)	C. Part/Section of Title 30 CFR	75.1702
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input checked="" type="checkbox"/>				
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input checked="" type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action		13. Type of Issuance (check one) Citation <input type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>				E. Citation/ Order Number
15. Area or Equipment				F. Dated Mo Da Yr
16. Termination Due		A. Date Mo Da Yr	B. Time (24 Hr. Clock)	
Section III--Termination Action				
17. Action to Terminate The foreman removed the smoking material from the mine.				
18. Terminated	A. Date Mo Da Yr 3/28/2023	B. Time (24 Hr. Clock) 1100		
Section IV--Automated System Data				
19. Type of Inspection (activity code)	E01	20. Event Number	1234572	21. Primary or Mill
22. AR Name			Copper Pot	
			23. AR Number	12345
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>				

## **Section 104(a): Violation Related to Smoking Materials at the Mine**

When an inspector finds a miner smoking or carrying smoking materials, matches, or lighters that enable a heat source to light the smoking material in a prohibited area, the inspector shall issue a citation and, depending on the circumstance observed, possibly an imminent danger withdrawal order to the mine operator or contractor. Even if the inspector does not issue a § 110(g) notice to a miner, the inspector can still issue a § 104(a) citation to the mine operator. If warranted, the inspector may also issue a § 104(d) series.

**Note:** Since smoking is not prohibited in all mines, the inspector should identify whether smoking is prohibited in the type of mine under inspection.

### **Form 7000-3 Guidance: Section 104(a) Citation for Smoking Materials or Use of**

Issue the § 104(a) or § 104(d) series violation to the mine operator or contractor.

**Item 8.** The narrative must clearly state how the standard was violated. Include a description of the hazard to miners should an accident or incident occur and explain the exposure to the hazard. Try to phrase the narrative so it resembles or identically matches the language used in the § 110(g) notice that was issued to the miner (if issued).

**Note:** Be sure to omit the statement about the individual civil penalty (i.e., "This is a notification that <miner's full name> will receive a civil penalty for willfully violating a mandatory safety standard relating to smoking or the carrying of smoking materials, matches, or lighters.") since the mine operator or contractor is the recipient of the § 104(a) or § 104(d) series violation.

**Item 9C.** Complete with one of the standards violated: 56/57.4100; 57.5041; 56/57.6904; 56/57.7805; 57.22101; 57.22102; 57.22105; 75.1702; or 77.1711.

**Item 10C.** S&S is yes when the inspector assesses a violation as:

**Injury or Illness(has)(is):** Reasonably Likely, Highly Likely, or Occurred  
**AND**

**Injury of Illness could reasonably be expected to be:** Lost Workdays or Restricted Duty, Permanently Disabling, or Fatal.

**Note:** Remember to provide sufficient information in Item 8's narrative to satisfy the four-part Mathies Test.

**Item 16.** Enter the date and time by which the operator or contractor must abate the violation.

**Item 17.** Describe the actions the operator or contractor took or implemented to abate the violation.

**Item 18.** Enter the termination date and time.

# Sample Section 104(a) Citation for a Miner Smoking and/or Possessing Smoking Materials

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 3/28/2023	2. Time (24 Hr. Clock)	1031	3. Citation/ Order Number 7654351
4. Served To	Jane Doe, Mine Manager		5. Operator Academy Mining Company, Inc.	
6. Mine	Blue Falcon #2 Mine		7. Mine ID	76-01254 (Contractor)
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>During a smoker's check conducted by the foreman at MSHA request on the 4th West working section, a miner had four cigarettes, two used cigarette butts, and a cigarette lighter in a prohibited area. This mine is on a five-day spot of methane liberation. The smoking articles would easily ignite the methane or cause a mine fire to occur endangering the miners working in this mine.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 75.1702	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input checked="" type="checkbox"/>				
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104 (a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			E. Citation/ Order Number	F. Dated Mo Da Yr
15. Area or Equipment				
16. Termination Due				
A. Date	Mo Da Yr 4/28/2023	B. Time (24 Hr. Clock)	1100	
Section III--Termination Action				
17. Action to Terminate A smoker search was conducted by the foreman, and only one miner on this section had smoke articles and material. The miner was removed from the mine by the operator. The foreman discussed the hazards associated with smoking in prohibited areas with the crew.				
18. Terminated				
A. Date	Mo Da Yr 3/28/2023	B. Time (24 Hr. Clock)	1100	
Section IV--Automated System Data				
19. Type of Inspection (activity code) E01		20. Event Number 1234572		21. Primary or Mill
22. AR Name Copper Pot				23. AR Number 12345
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>				

## **Section 314(b): Notice to Provide Safeguard(s)**

### **Underground Coal Mines Only**

Section 314(b) of the Mine Act is specific to underground coal mines. It requires the mine operator to provide “other safeguards” an AR judges adequate to minimize haulage and hoisting-related hazards while transporting miners and materials.

MSHA describes “other safeguards” and related hazards in 30 C.F.R., Subpart O – Hoisting and Mantrips, § 75.1403, specifically within §§ 75.1403-2 through 75.1403-11. When an inspector identifies a hazard in an underground coal mine that falls under those regulations, the inspector shall provide a notice to the mine operator in writing. This notice will outline a specific safeguard required under § 75.1403. The inspector shall also set a deadline for the operator to implement and maintain the required safeguard.

### **Scope**

As noted above, § 314(b) is specific to transporting miners and materials; any other use is outside that intended scope.

### **Issuing a Safeguard**

#### **Summary Review**

To ensure that the mine has not previously received a similar safeguard, the inspector shall review MSHA Form 2000-136, “Summary of Safeguards” before issuing a new safeguard.

#### **Previous Similar Safeguard**

If the mine has already received a similar safeguard for the same criteria (see §§ 75.1403-2 through 75.1403-11), the inspector shall use the previously issued safeguard.

The inspector should read the previous safeguard carefully and decide if the Item 8 narrative lists the specific current hazard. If it does not, the inspector shall modify the existing safeguard to include the specific current hazard, and issue only the modification, not a new safeguard.

When modifying an existing safeguard, use or revise the following language to amend Item 8.

**Sample Item 8 Modification:** This Safeguard is modified to include the following:  
On February 3, 2023, during an E01 inspection on the working section a diesel-powered scoop was observed parked on an incline without the wheel blocked or the

machine turned into the rib. This safeguard is hereby modified to require the blocking of all scoops or turning the scoop into the rib to prevent accidental movement of the machine when left unattended. Hazards associated with this condition include struck by, crushing injuries, and death. The mine operator has 10 days to comply with this additional requirement to this safeguard.

## **New Safeguard**

If, after careful review, the inspector does not identify a previously issued safeguard for a specifically referenced criterion, the inspector shall issue a safeguard under § 75.1403 and reference the criterion (see §§ 75.1403-2 through 75.1403-11) in Item 8. If there are no criteria that fit the condition, then an inspector may use “other safeguards” as noted in § 75.1403, provided the “other safeguard” relate to haulage or transportation of miners or materials.

**Item 8.** Describe the condition or practice that supports the safeguard. Ensure the narrative fits one of the criteria in §§ 75.1403-2 through 75.1403-11. If “other safeguards” are required, see § 75.1403-1(a).

The language must be specific to the related hazard(s). The narrative must identify both the hazard(s) and the mine’s failure: why the inspector thought a safeguard was warranted. List the hazard(s) in the narrative of the safeguard.

The inspector must include the following statements in the narrative.

1. This is a notice to Provide a Safeguard requiring <list the requirements>.
2. This Safeguard is being issued in reference to criteria in 75.1403- <list which one>.

**Sample Item 8:** This is a notice to provide a Safeguard requiring all scoops to be blocked against motion when left unattended. During today’s inspection on the 3<sup>rd</sup> west working section, a diesel power scoop was observed parked on an incline unattended without wheel chocks or having the bucket turned into the rib to prevent accidental movement. Hazards associated with this condition includes struck by, crushing injuries, and death. This safeguard is being issued in reference to criterion 75.1403-10(e).

## **Establishing an Abatement Period**

The inspector shall set an abatement period that affords the mine operator time to implement the safeguard. Remember that it is a safeguard, not a citation, that establishes a new standard and notifies the mine operator of a new requirement based on the criteria described under § 75.1403. The inspector should use good judgment and work cooperatively with the operator to determine a reasonable amount of time to comply with the safeguard. For example, if the abatement period is too brief, the

operator might need additional time to address the safeguard in safety meetings if crew rotations interfere with the timing.

### **Supervisory Oversight**

The inspector's supervisor shall review the safeguard for accuracy and update the MSHA Form 2000-136, "Summary of Safeguards." The supervisor will then promptly provide each inspector a copy of the new safeguard for review, along with any modification to the existing safeguards. When applicable, the supervisor will ensure the modification and an explanation to inspection personnel have been added to the "Summary of Safeguards."

### **Mine Operator Objections**

Because a safeguard is not a citation or order, until 2014 there was no provision for an operator to object or contest to receiving such a notice. However, in September 2014, MSHA issued a policy letter, P14-V-02, that set forth procedures for issuing "Technical Citations for Safeguards" when an underground coal mine operator sought to challenge a safeguard notice before the Federal Mine Safety and Health Review Commission.

# Sample Section 314(b): Notice to Provide Safeguard(s)

Mine Citation/Order		<b>U.S. Department of Labor</b> <b>Mine Safety and Health Administration</b>	
Section I--Violation Data			
1. Date	Mo Da Yr 4/3/2023	2. Time (24 Hr. Clock) 0725	3. Citation/ Order Number 7654352
4. Served To Jane Doe, Mine Manager		5. Operator Academy Mining Company, Inc.	
6. Mine Blue Falcon #2 Mine		7. Mine ID 76-01254 (Contractor)	
8. Condition or Practice			8a. Written Notice (103g) <input type="checkbox"/>
<p>This is a Notice to Provide a Safeguard requiring all types of mantrips to travel at no more than the maximum speed of 10 MPH. The mantrips shall be operated at speeds below the maximum speed when conditions warrant in order to maintain control of the mantrips in a safe manner. Mantrips shall be provided with a functioning speedometer. During the accident investigation, it was determined that the mantrip was traveling at an excessive speed when it overturned causing severe injuries to four miners. This Safeguard is being issued in reference to criteria in 75.1403-7(f).</p>			
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>			
9. Violation	A. Health Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 75.1403
Section II--Inspector's Evaluation			
10. Gravity:			
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>			
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>			
C. Significant and Substantial: Yes <input type="checkbox"/> No <input type="checkbox"/>			D. Number of Persons Affected:
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>			
12. Type of Action 314 (b)		13. Type of Issuance (check one) Citation <input type="checkbox"/> Order <input type="checkbox"/> Safeguard <input checked="" type="checkbox"/> Written Notice <input type="checkbox"/>	
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			E. Citation/ Order Number
14. F. Dated Mo Da Yr			
15. Area or Equipment			
16. Termination Due			
A. Date	Mo Da Yr 4/10/2023	B. Time (24 Hr. Clock)	0725
Section III--Termination Action			
17. Action to Terminate			
18. Terminated			
A. Date	Mo Da Yr	B. Time (24 Hr. Clock)	
Section IV--Automated System Data			
19. Type of Inspection (activity code) E01		20. Event Number 1234572	
21. Primary or Mill			
22. AR Name Copper Pot			23. AR Number 12345
<p>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</p>			

## **Section 104(a): Citation – Violation of an Existing Safeguard**

A safeguard issued at an underground coal mine becomes a standard for that mine; if violated, MSHA can cite the mine. A best practice is to carry a list of the issued safeguard(s) for easy reference while inspecting.

If an inspector finds a violation of a safeguard, the inspector will need that safeguard number and must follow the prescribed guidelines for issuing a § 104(a) citation or § 104(d) citation or order.

## **Form 7000-3 Guidance: Violation of an Existing Safeguard**

**Item 8.** When issuing a citation or order for violating a safeguard previously issued to the mine, the narrative of the citation or order must address the hazard identified in that safeguard notice.

**Example:** The original safeguard mandated reducing the speed of mantrips and prescribed a maximum speed limit. The violation narrative should note that the inspector is citing the mine for violating the maximum speed limit mandated in the original safeguard.

**Item 9C.** Enter “75.1403.”

**Items 14C., 14E., and 14F.** Reference the original safeguard.

**Item 14E.** Select the safeguard notice number.

**Item 14F.** IAS will autofill.

## Sample Section 104(a) Citation – Violation of an Existing Safeguard

Mine Citation/Order		<b>U.S. Department of Labor</b> <b>Mine Safety and Health Administration</b>	
Section I--Violation Data			
1. Date	Mo Da Yr 4/12/2023	2. Time (24 Hr. Clock) 1200	3. Citation/ Order Number 7654353
4. Served To Jane Doe, Mine Manager		5. Operator Academy Mining Company, Inc.	
6. Mine Blue Falcon #2 Mine		7. Mine ID 76-01254 (Contractor)	
8. Condition or Practice			8a. Written Notice (103g) <input type="checkbox"/>
<p>The Kubota personal carrier, #25 was observed speeding down hill in the 1st West intake roadway. The Kubota had two passengers. The Kubota sped past the outby foreman and one inspector standing in the cross cut adjacent to the roadway. The driver of the mantrip was stopped by the foreman waving his light. The driver was questioned by the foreman about his speed and he stated he was only traveling 15 MPH at the fastest. The mine has a history of personal carrier accidents due to excessive speeds. The safeguard issued for this mine established a maximum speed limit of 10 MPH.</p> <p>Standard 75.1403 was cited 1 time in two years at mine 7601254 (1 to the operator, 0 to a contractor).</p>			
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>			
9. Violation	A. Health Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 75.1403
Section II--Inspector's Evaluation			
10. Gravity:			
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>			
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input checked="" type="checkbox"/>			
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			D. Number of Persons Affected: 002
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>			
12. Type of Action 104 (a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>	
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input checked="" type="checkbox"/> D. Written Notice <input type="checkbox"/>		E. Citation/ Order Number 7654352	F. Dated Mo Da Yr 4/3/2023
15. Area or Equipment			
16. Termination Due			
A. Date	Mo Da Yr 4/12/2023	B. Time (24 Hr. Clock)	1210
Section III--Termination Action			
17. Action to Terminate			
The foreman parked the Kubota personal carrier in the cross cut and cautioned the driver to travel the speed limit and reduce his speed to a safe speed to prevent accidents.			
18. Terminated			
A. Date	Mo Da Yr 4/12/2023	B. Time (24 Hr. Clock)	1210
Section IV--Automated System Data			
19. Type of Inspection (activity code) E01		20. Event Number 1234572	21. Primary or Mill
22. AR Name Copper Pot			23. AR Number 12345
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>			

## CHAPTER 3 – HEALTH VIOLATIONS

This chapter provides guidance for completing MSHA Forms 7000-3, Mine Citation/Order, and 7000-3a, Mine Citation/Order Continuation for health-related violations. The chapter also describes procedures for citing health violations and includes form completion guidance for selected and commonly used health-related Mine Act provisions. As part of this guidance, the chapter includes examples of completed forms for the named provisions. However, as noted in the Disclaimer, the examples might not exactly duplicate the actual forms.

### Documenting Health Violations

When health sample results show an overexposure to dust, chemical contaminants, etc., the inspector will document the following information:

- Contaminant type;
- Amount of exposure as compared to what is allowed;
- Error factor used;
- Length of the miner's exposure;
- PPE program (or lack of) the operator implemented;
- Type of (or lack of) PPE worn when the overexposure occurred;
- Training provided to the miner for using PPE (if appropriate);
- Controls used and their condition; and
- Feasible controls available.

### Contaminants with Ceiling Designations

When there is overexposure to an airborne contaminant that has a ceiling designation, it is appropriate to issue a § 104(a) citation with an abatement time reflecting the time needed to remove miners. Miners shall not reenter the area until the hazardous condition(s) is corrected, except for those working to establish the necessary engineering controls. These miners must wear appropriate PPE.

**Note:** Inspectors should consider 30 C.F.R. §§ 56.5001(c) and 56.5005 as one standard, along with 30 C.F.R. §§ 57.5001(c) and 57.5005. Enter the standard in Item 9C of the Mine Citation/Order Form as 56.5001(c)/56.5005 and 57.5001(c)/57.5005, respectively.

The above situation may support a § 107(a) imminent danger order only if the work condition(s) and concentration(s) measured create a situation that is immediately dangerous to the exposed miners.

## **Imminent Danger Situations – Chemical Hazards**

### **IDLH Levels**

MSHA considers the atmosphere "immediately harmful to life" whenever a contaminant's Immediate Danger to Life or Health (IDLH) limit is exceeded. The IDLH limits for various contaminants are available in the "National Institute for Occupational Safety and Health (NIOSH) Pocket Guide to Chemical Hazards" (also available as a mobile web app). However, imminent danger situations can exist below IDLH levels depending on a miner's length of exposure, work activity, or time to escape.

Whenever a contaminant's IDLH limit, plus the sampling factor, is exceeded, an inspector shall issue a § 107(a) order of withdrawal with contributing citations and/or orders, noting the contaminant levels and the conditions supporting the imminent danger situation. (See: Chapter 2, Section 104(a) Citation in Conjunction with a Section 107(a) Order of Withdrawal.) The order requires that the operator immediately withdraw all miners from the contaminated atmosphere.

The order should note that only those miners wearing appropriate PPE and working to establish engineering controls, are permitted to reenter the affected area. Additionally, as §§ 56/57.5005(c) requires, the order shall mandate the presence of at least one other person with backup equipment and rescue capability before any unprotected miners may reenter an "immediately harmful to life" atmosphere.

### **Other Imminent Danger Situations**

In some cases, an imminent danger may exist even though a contaminant's IDLH limit is not exceeded. Continual exposure at high levels and absorption through all routes of exposure can result in similar harm to miners. An inspector can issue an imminent danger order if miners report experiencing probable exposure-related complaints such as dizziness, headaches, slowed reflexes, lack of coordination or other serious symptoms. Consider all routes of exposure including direct contact, along with the work environment, and whether serious physical harm or death may occur.

In the case of an exposure that may cause serious physical harm or death, an inspector shall issue a § 107(a) order of withdrawal with contributing citations and/or orders and note the contaminant levels and the conditions supporting the imminent danger situation. The order requires that the operator immediately withdraw miners from the contaminated atmosphere. Note on the order that only those miners wearing appropriate PPE and working to establish engineering controls, are permitted to reenter the affected area (reference the miners as §

104(c) personnel). Additionally, as §§ 56/57.5005(c) requires, the order shall mandate the presence of at least one other person with backup equipment and rescue capability before any unprotected miners may reenter an “immediately harmful to life” atmosphere.

**Example:** A miner has been exposed to 700 parts per million (ppm) of carbon monoxide while drilling in the same area for the last four hours. The miner complains of dizziness, headache, and nausea, and is uncoordinated or showing severe mental confusion. The miner's partner reports similar symptoms. Further investigation reveals that the drill has fallen on both miners three times in the last hour due to their lack of concentration and inability to coordinate drilling activities. Ventilation in the area is inadequate; the vent tubing that supplies air into the area has holes and blockages.

Due to the high exposure to a contaminant, length of exposure time, miners' symptoms, safety hazards associated with incorrectly operating equipment, and the hazardous workplace environment, an imminent danger situation exists.

**Solution:** Issue a § 107(a) imminent danger order and withdraw affected miners from the workplace.

## **Negligence and Gravity Evaluations – Health Violations**

The following instructions apply to Section II of the Mine Citation/Order Form 7000-3 unless otherwise specified.

### **Negligence**

The degree of negligence depends on the mine operator's actions **before** MSHA collected the samples that established the violation. The inspector should consider factors such as:

- Whether the mine operator knew or had been told of the high contaminant level(s);
- The condition of engineering control systems;
- The amounts and accuracy of dust, fume, and gas surveys;
- Whether the operator provided engineering control systems;
- Whether the operator provided:
  - appropriate PPE;
  - any fit-testing (if appropriate);
  - training in PPE use and limitations (if appropriate); and

- whether personnel properly wore, maintained, and cleaned PPE.

## Gravity

## Likelihood

Consider "Reasonably Likely" or "Highly Likely" if: the operator failed to provide respiratory or hearing protection; the respiratory or hearing protection was not adequately maintained; the miner was not respirator fit-tested; the miner had not received training in the use or limitations of the respirator; or the protection was not suitable for the hazard. Also, consider "Reasonably Likely" or "Highly Likely" if deficiencies in the respiratory or hearing protection program meant that the PPE was inadequate.

**Note:** For nuisance particulates and silver metal overexposures between 0.01 mg/m<sup>3</sup> and 0.1 mg/m<sup>3</sup>, operators must use engineering controls to reduce exposure to the permissible limit and comply with the respiratory protection requirements of standard 56/57.5005. However, if issuing .5001(a)/.5005 citations for overexposure to nuisance particulates and silver metals, an inspector cannot evaluate readings in the above concentration range as "S&S." Overexposures to soluble compounds of silver, such as silver nitrate, above 0.01 mg/m<sup>3</sup> can be evaluated as "S&S" if miners were not wearing adequate respiratory protection.

Designate the occurrence as "Unlikely" if the miner wore appropriate respiratory protection, the protection was appropriate to the hazard, the miner had been respirator fit-tested, and the mine operator had a respiratory protection program consistent with the American National Standards Institute (ANSI) Z88.2-1969.

## Severity

Determine overexposure to airborne contaminants and physical agents according to the severity of the potential disease result. For example, respirable crystalline silica exposure causes silicosis, which is permanently disabling and sometimes fatal; radon daughter (radon progeny) exposure can cause lung cancer, which can be fatal; and excessive noise causes hearing loss, which can be permanently disabling.

## Number of Persons Affected

For most situations, indicate the number of miners sampled in Item 10D of the Mine Citation/Order Form. However, if for example, other miners perform the same job on different shifts or several miners rotate during the same shift and perform the identical job, enter that total number.

**Example:** A day-shift crusher operator is overexposed to respirable crystalline silica. Two other miners operate the crusher on the evening shift.

**Solution:** Enter "3" in Item 10D for Persons Affected.

## Significant and Substantial Violations

- Select **"Yes"** in Item 10C if it is reasonably likely that one or more miners will or could suffer at least "Lost Workdays" or "Restricted Duty" due to exposure to the contaminant.
- Select **"No"** in Item 10C if it is not reasonably likely that one or more miners will or could suffer at least "Lost Workdays" or "Restricted Duty" as result of exposure to the contaminant.

**Note:** Since all overexposure limits have a likelihood of health impairment, the S&S evaluation depends on the miner's use of adequate PPE.

## Documenting Airborne Contaminant Violations

As part of Item 8's narrative, include the: Threshold Limit Value (TLV) or exposure limit, error factor, contaminant, concentration, job title of the miner sampled, equipment and area where the person was working, and the reason for the overexposure. Always specify whether the miner was wearing approved respiratory protection, had received adequate training and fit-testing, and followed a maintenance program. Include a statement noting the sample date – i.e., the occurrence date in IAS.

When there is an overexposure to airborne contaminants (except asbestos or those with ceiling limits), the inspector should consider §§ 56.5001(a) and 56.5005 and §§ 57.5001(a) and 57.5005 as single standards. Therefore, enter the standard in Item 9C of the Mine Citation/Order Form as 56.5001(a)/56.5005 and 57.5001(a)/57.5005, respectively.

Similarly, when overexposures are for asbestos, the inspector should consider §§ 56.5001(b) and 56.5005 and §§ 57.5001(b) and 57.5005 as single standards. Therefore, enter the standard in Item 9C of the Mine Citation/Order Form as 56.5001(b)/56.5005 and 57.5001(b)/57.5005, respectively.

An inspector can use §§ 56.5005 and 57.5005 as single standards **only** where MSHA requires a respiratory protection program for compliance and the mine operator fails to follow the program's requirements or the overexposed miner is not wearing a respirator where required. The inspector can cite §§ 56.5005 and 57.5005 without resampling if:

- The inspector saw the area or equipment in question operating without miner(s) complying with the respiratory protection program mandated by an outstanding citation for dust overexposure; or
- The inspector allowed the mine operator to operate because all feasible engineering or administrative controls had been implemented but MSHA still required a respiratory protection program to achieve compliance.

The inspector should evaluate the citation as "S&S" if the miner was not wearing a respirator; the miner sampled had not been properly fit-tested with the respirator worn; the respirator was not properly maintained; or the respirator was not selected in accordance with ANSI Z88.2-1969. (Note: See reference to ANSI Z88.2-1969 is subject to change to ASTM F3387-19 in April 2025 for coal mines and April 2026 for MNM mines and will include medical evaluations for respiratory protection.) There may be other circumstances where the inspector should evaluate the citation as "S&S." The inspector should review ANSI requirements and the circumstances of each case to determine whether to evaluate the citation as "S&S."

**Note:** For nuisance particulates and silver metal overexposures between 0.01 mg/m<sup>3</sup> and 0.1 mg/m<sup>3</sup>, operators must use engineering or administrative controls to reduce exposure to the permissible limit and comply with the respiratory protection requirements of standard 56/57.5005. However, if issuing .5001(a)/.5005 citations for overexposure to nuisance particulates and silver metal, an inspector cannot evaluate readings in the above concentration range as "S&S." Overexposures to soluble compounds of silver, such as silver nitrate, above 0.01 mg/m<sup>3</sup> should be evaluated as "S&S" if miners were not wearing adequate respiratory protection.

If miners were not wearing approved PPE, the initial termination due date will be the time necessary for the operator to provide appropriate respirators and develop a respiratory protection program in accordance with ANSI Z88.2-1969.

The inspector should also include a statement that after the mine operator implements a respiratory protection program in accordance with ANSI Z88.2-1969, the inspector will extend the citation to allow the operator time to implement engineering or administrative controls.

- If the inspector issues an abatement extension, the extension should state what items the operator must accomplish by the abatement due date.
- If resampling is complete but results have not been received, issue a time extension only if the termination time is past due.
- When a time extension is required because MSHA sampling indicated that the operator needs to complete additional work, the inspector will issue an extension.
- When resampling results show that contaminant levels are in compliance, enter the date and time of termination in Item 12 of Form 7000-3a.

### **Orders of Withdrawal – Airborne Contaminant Violations**

If miners are wearing appropriate PPE but the operator has made no progress towards compliance, the inspector must resample to determine if an overexposure still exists before issuing a § 104(b) order of withdrawal.

If the due date and time have passed, and the operator or contractor has failed to

provide appropriate respiratory protection, implement an appropriate respiratory protection program, or if the miner was not wearing an appropriate respirator, the inspector must issue a § 104(b) order of withdrawal. Once the operator implements an appropriate respiratory protection program, provides an appropriate respirator, and/or the miner wears an appropriate respirator, the inspector can modify the § 104(b) order to allow work to continue until the operator implements feasible engineering or administrative controls.

**Note:** If the operator or contractor can install feasible engineering or administrative controls more quickly than it can acquire the respiratory protection, then the inspector should require the quicker means of abatement.

The inspector must also issue a § 104(b) order if the operator or contractor has failed to implement feasible engineering or administrative controls within the established abatement time and there is no reason to extend that time. Once the operator implements appropriate engineering controls, the inspector can modify the § 104(b) order to allow work to continue until after receiving the resampling results, and can terminate the order if resampling indicates that the operator is in compliance.

When an inspector issues a § 104(b) order of withdrawal, Item 8 of Form 7000-3 should include a detailed description of the reasons for the operator's failure to abate the citation and actions necessary to achieve abatement of the condition or practice. If applicable, the inspector should note that the failure to abate the violation involved a PPE deficiency (e.g., respirators).

When an operator continues production in violation of a § 104(b) order or neglects to abide by the conditions of the § 104(b) order modification, the inspector must issue a § 104(a) citation to the operator for a violation of § 104(b) of the Mine Act and require, as an abatement condition, that the operator implement a respiratory protection program to achieve compliance.

### **Chemical Contaminant or Dust Citation – Boilerplate Text**

Include language in Form 7000-3's Item 8 about the possible sources of the contaminant and any obvious deficiencies of the control systems; the type and condition of any PPE; and, if the miner used a respirator, whether a respirator program consistent with ANSI Z88.2-1969 was in place. When a respiratory protection program is nonexistent or deficient, state that MSHA will extend the abatement time, if necessary, after the operator implements or modifies a respiratory protection program consistent with ANSI Z88.2-1969 and allow a reasonable period for installing controls.

“The <job description> <location description> was exposed to a (shift or time-weighted average) of <contaminant> on <sampling date>. This exceeded the TLV times the error factor of <factor>. The analytical results were received, and the citation was issued on <date citation issued>.”

## Selected Health Citations

### Form 7000-3 Guidance: Section 104(a) Citation – Welding Fume S&S

**Item 1.** Enter the citation issuance date. In most cases, this is also the date the inspector received the sample results and determined that a violation occurred.

**Note:** The occurrence date in IAS is the sample date. If the inspector receives sample results on the same date, the issue date and occurrence date may be the same.

**Item 2.** Enter the citation issue time.

**Item 8.** List the metal fume and/or metal dust concentration. List all TLVs for the metal fume and/or metal dust. List the error factor for each metal fume and/or metal dust. The Pittsburgh Safety and Health Technology Center laboratory will provide the concentration, TLV, and error factor. List the mechanism that produced the fume (hot process) or dust (mechanical).

**Note:** When issuing an extension, use the Continuation Form 7000-3a. In Section II – Justification for Action note the operator's actions that support the extension, along with a statement explaining that the extension will allow the operator to install engineering and/or implement administrative controls.

**Note:** When terminating any citation, use the Continuation Form 7000-3a. For any citation where the operator has installed engineering and/or implemented administrative controls to reduce exposure, list all controls in the Continuation Form's Section II – Justification for Action.

## Sample Section 104(a) Citation – Welding Fumes S&S

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 3/31/2023	2. Time (24 Hr. Clock) 1355	3. Citation/ Order Number	7654354
4. Served To	Nancy Doe, Mine Manager		5. Operator	Academy Mining Company
6. Mine	Blue Falcon Sand and Gravel Mine		7. Mine ID	76-54312 (Contractor)
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>The repair shop welder was exposed to a full-shift time-weighted average of 1.5mg/m3 of copper fume when sampled on 3/25/2023. This amount exceeded the TLV of 1.0 mg/m3 times the error factor (1.14 for Copper). The welder was air-arching using copper clad welding rods. The welder was not wearing a respirator or enrolled in a respirator protection program meeting the requirements of ANSI Z88.2-1969. The abatement time is to allow the mine operator to implement engineering controls and establish a compliant respiratory protection program.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health Safety Other <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 56.5001 (a) / .5005	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input checked="" type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action		13. Type of Issuance (check one)		
104 (a)		Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action				F. Dated
A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>				Mo Da Yr
15. Area or Equipment				
16. Termination Due				
A. Date	Mo Da Yr 4/7/2023	B. Time (24 Hr. Clock)	1145	
Section III--Termination Action				
17. Action to Terminate				
18. Terminated				
A. Date	Mo Da Yr	B. Time (24 Hr. Clock)		
Section IV--Automated System Data				
19. Type of Inspection (activity code)		20. Event Number	21. Primary or Mill	
E01		1234567	P	
22. AR Name			23. AR Number	
Copper Pot			12345	
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>				

## Sample Section 104(a) Citation – Welding Fumes S&S Extension

Mine Citation/Order Continuation					
<b>Section I—Subsequent Action/Continuation Data</b>					
1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/> <input type="checkbox"/>	2. Dated (Original Issue)	Mo Da Yr 03/31/2023	3. Citation/ Order Number 7654354 - 01		
4. Served To Nancy Doe, Mine Manager			5. Operator Academy Mining Company		
6. Mine Blue Falcon Sand and Gravel Mine			7. Mine ID (Contractor) 76-54312		
<b>Section II—Justification for Action</b>					
<p>The mine operator enrolled affected miners into an ANSI Z88.2 1969 complaint respiratory protection program. This citation is extended to allow the operator time to install engineering controls that will reduce the affected miner exposure below the TLV.</p>					
<b>Section III—Subsequent Action Taken</b>					
8. Extended To		A. Date Mo Da Yr 04/24/2023	B. Time (24 Hr. Clock) 12:00	<input type="checkbox"/> C. Vacated <input type="checkbox"/> D. Terminated <input type="checkbox"/> E. Modified	
<b>Section IV—Inspection Data</b>					
9. Type of Inspection E01		10. Event Number 1234567			
11. AR Name Copper Pot		AR Number 12345	12. Date Mo Da Yr 04/07/2023	13. Time (24 Hr. Clock) 11:47	
MSHA Form 7000-3a, Mar 85 (revised)					

## Sample Section 104(a) Citation – Welding Fumes S&S Termination

Mine Citation/Order  
Continuation



Section I—Subsequent Action/Continuation Data

1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/> <input type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 03/31/2023	3. Citation/ Order Number 7654354 - 02
4. Served To Nancy Doe, Mine Manager		5. Operator Academy Mining Company
6. Mine Blue Falcon Sand and Gravel Mine		7. Mine ID (Contractor) 76-54312

Section II—Justification for Action

The Repair Shop Welder was resample on 04/17/2023 and was found to be exposed to a full-shift time-weighted average of 0.8 mg/m<sup>3</sup> of copper fume. This amount is less than the 1973 ACGIH TLV exposure limit of 1.0 mg/m<sup>3</sup> times the error factor (1.14 mg/m<sup>3</sup>). The mine operator installed a portable welding fume extractor and has trained the welders on its use. The Repair Shop Welder's exposure has been reduced below the TLV terminating this citation.

Section III—Subsequent Action Taken

8. Extended To	A. Date Mo Da Yr	B. Time (24 Hr. Clock)	<input type="checkbox"/> C. Vacated	<input checked="" type="checkbox"/> D. Terminated	<input type="checkbox"/> E. Modified
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Section IV—Inspection Data

9. Type of Inspection E01	10. Event Number 1234567		
11. AR Name Copper Pot	AR Number 12345	12. Date Mo Da Yr 04/20/2023	13. Time (24 Hr. Clock) 14:01

MSHA Form 7000-3a, Mar 85 (revised)

## Section 104(a): Citation – Total Dust Non-S&S

### Form 7000-3 Guidance: Section 104(a) Citation – Total Dust Non-S&S

**Item 1.** Enter the citation issuance date. In most cases, this is also the date the inspector received the sample results and determined that a violation occurred.

**Note:** The occurrence date in IAS is the sample date. If the inspector receives sample results on the same date, the issue date and occurrence date may be the same.

**Item 8.** List the metal fume and/or metal dust concentration. List all TLVs for the metal fume and/or metal dust. List the error factor for each metal fume and/or metal dust. The Pittsburgh Safety and Health Technology Center laboratory will provide the concentration, TLV, and error factor. List the mechanism that produced the fume (hot process) or dust (mechanical).

**Item 10A.** Select “Unlikely.”

**Item 10B.** The illness will depend on the material and the exposure.

**Item 10C.** Per MSHA policy, an inspector cannot issue a citation for overexposure for a listed nuisance dust as S&S.

**Note:** For nuisance particulates and silver metal overexposures between 0.01 mg/m<sup>3</sup> and 0.1 mg/m<sup>3</sup>, operators must use engineering controls to reduce exposure to the permissible limit and comply with the respiratory protection requirements of standard 56/57.5005. However, if issuing, .5001(a)/.5005 citations for overexposure to nuisance particulates and silver metals, an inspector cannot evaluate readings in the above concentration range as “S&S.” Overexposures to soluble compounds of silver, such as silver nitrate, above 0.01 mg/m<sup>3</sup> can be evaluated as “S&S” if miners were not wearing adequate respiratory protection.

**Note:** When issuing an extension, use the Continuation Form 7000-3a. In Section II – Justification for Action note the operator’s actions that support the extension, along with a statement explaining that the extension will allow the operator to install engineering and/or implement administrative controls.

**Note:** When terminating any citation, use the Continuation Form 7000-3a. For any citation where the operator has installed engineering and/or implemented administrative controls to reduce exposure, list all controls in the Continuation Form’s Section II – Justification for Action.

# Sample Section 104(a) Citation – Total Dust Non-S&S

<b>Mine Citation/Order</b>		<b>U.S. Department of Labor</b> <b>Mine Safety and Health Administration</b>	
<b>Section I--Violation Data</b>			
1. Date	Mo Da Yr 3/21/2023	2. Time (24 Hr. Clock) 1030	3. Citation/ Order Number 7654355
4. Served To	Nancy Doe, Mine Manager		5. Operator Academy Mining Company
6. Mine	Blue Falcon Sand and Gravel Mine		7. Mine ID 76-54312 (Contractor)
8. Condition or Practice			8a. Written Notice (103g) <input type="checkbox"/>
<p>The Dry Plan Operator was exposed to a shift-weighted average of 29.0 mg/m3 of limestone dust on 03/05/2023. This exceeded the TLV of 10.0mg/m3 times the error factor (1.10 for total nuisance particulate). A Respiratory Protection Program meeting the requirements of ANSI Z88.2-1968 was not in place. The original abatement has been set to allow the operator time to enroll all effected miners in a compliant respiratory protection program. The mine operator must establish engineering controls to reduce the limestone dust exposure to less than the TLV.</p>			
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>			
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 56.5001 (a) / 56.5005
<b>Section II--Inspector's Evaluation</b>			
10. Gravity:			
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input checked="" type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>			
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input checked="" type="checkbox"/> Fatal <input type="checkbox"/>			
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>			
12. Type of Action 104 (a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>	
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			E. Citation/ Order Number
			F. Dated Mo Da Yr
15. Area or Equipment			
16. Termination Due			
A. Date	Mo Da Yr 3/30/2023	B. Time (24 Hr. Clock)	1230
<b>Section III--Termination Action</b>			
17. Action to Terminate			
18. Terminated			
A. Date	Mo Da Yr	B. Time (24 Hr. Clock)	
<b>Section IV--Automated System Data</b>			
19. Type of Inspection (activity code)	B01	20. Event Number 1234567	21. Primary or Mill P
22. AR Name Copper Pot			23. AR Number 12345
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>			

## Sample Section 104(a) Citation – Total Dust Non-S&S Extension

Mine Citation/Order Continuation					
Section I—Subsequent Action/Continuation Data					
1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/> <input type="checkbox"/>		2. Dated (Original Issue) Mo Da Yr 03/21/2023		3. Citation/Order Number 7654355 - 01	
4. Served To Nancy Doe, Mine Manager			5. Operator Academy Mining Company		
6. Mine Blue Falcon Sand and Gravel Mine			7. Mine ID (Contractor) 76-54312		
Section II—Justification for Action					
<p>The mine operator has enrolled effected miners in an ANSI Z88.2 1969 complaint respiratory protection program. This citation is being extended to allow the mine operator time to install engineering controls.</p>					
Section III—Subsequent Action Taken					
8. Extended To		A. Date Mo Da Yr 04/06/2023		B. Time (24 Hr. Clock) 12:00	
				<input type="checkbox"/> C. Vacated <input type="checkbox"/> D. Terminated <input type="checkbox"/> E. Modified	
Section IV—Inspection Data					
9. Type of Inspection E01		10. Event Number 1234567			
11. AR Name Copper Pot		AR Number 12345	12. Date Mo Da Yr 03/30/2023		13. Time (24 Hr. Clock) 13:00
MSHA Form 7000-3a, Mar 85 (revised)					

## Sample Section 104(a) Citation – Total Dust Non-S&S Termination

Mine Citation/Order  
Continuation



Section I—Subsequent Action/Continuation Data

1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/> <input type="checkbox"/>	2. Dated (Original Issue) 03/21/2023	Mo Da Yr	3. Citation/ Order Number 7654355 - 02
4. Served To Nancy Doe, Mine Manager	5. Operator Academy Mining Company		
6. Mine Blue Falcon Sand and Gravel Mine	7. Mine ID 76-54312	(Contractor)	

Section II—Justification for Action

The Dry Plant Operator was resampled on 04/04/2023 and the shift-weighted average to limestone dust was determined to be 1.44 mg/m<sup>3</sup>. This shift-weighted average is less than the TLV time an error factor of 1.10 mg/m<sup>3</sup>. The operator has installed and implemented engineering and administrative controls upgrading the seals on the Dry Plant Operators control booth. Installing ventilation hoods at product transfer points and installed ventilation hoods on the screens. The mine operator implemented a job rotation schedule that requires the Dry Plant Operator to exchange jobs with the primary Crusher Plant Operator halfway through their shift and ensures that no miner will perform the Dry Plant operator's job functions for more than 6 hours.

Section III—Subsequent Action Taken

8. Extended To	A. Date Mo Da Yr	B. Time (24 Hr. Clock)	<input type="checkbox"/> C. Vacated	<input checked="" type="checkbox"/> D. Terminated	<input type="checkbox"/> E. Modified
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Section IV—Inspection Data

9. Type of Inspection E01	10. Event Number 1234567		
11. AR Name Copper Pot	AR Number 12345	12. Date Mo Da Yr 04/06/2023	13. Time (24 Hr. Clock) 11:23

MSHA Form 7000-3a, Mar 85 (revised)

## **Section 104(a): Citation – Respirable Dust Non-S&S**

### **Form 7000-3 Guidance: Section 104(a) Citation – Respirable Dust Non-S&S**

**Item 1.** Enter the citation issuance date. In most cases, this is also the date the inspector received the sample results and determined that a violation occurred.

**Note:** The occurrence date in IAS is the sample date. If the inspector receives sample results on the same date, the issue date and occurrence date may be the same.

**Item 8.** List the respirable dust concentration, TLV, and error factor for each dust. The Pittsburgh Safety and Health Technology Center laboratory will provide the concentration, TLV, and error factor. List the mechanism that produced the dust (mechanical).

**Item 10A.** Select “Unlikely.”

**Item 10B.** The illness will depend on the material and the exposure.

**Item 10C.** Per MSHA policy, an inspector cannot issue a citation for overexposure for a listed nuisance dust as S&S.

**Note:** When issuing an extension, use the Continuation Form 7000-3a. In Section II – Justification for Action note the operator’s actions that support the extension, along with a statement explaining that the extension will allow the operator to install engineering and/or implement administrative controls.

**Note:** When terminating any citation, use the Continuation Form 7000-3a. For any citation where the operator has installed engineering and/or implemented administrative controls to reduce exposure, list all controls in the Continuation Form’s Section II – Justification for Action.

# Sample Section 104(a) Citation – Respirable Dust Non-S&S

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
<b>Section I--Violation Data</b>				
1. Date	Mo Da Yr 3/13/2023	2. Time (24 Hr. Clock)	1230	3. Citation/ Order Number 7654356
4. Served To	Nancy Doe, Mine Manager		5. Operator Academy Mining Company	
6. Mine	Blue Falcon Sand and Gravel Mine		7. Mine ID 76-54312 (Contractor)	
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>The Dry Plant Operator was exposed to a shift-weighted average of 0.35 mg/m3 of respirable silica-bearing dust on 03/01/2023. This exceeded the TLV of 0.27 mg/m3 times the error factor (1.20 for respirable free silica dust sampling and analysis). The miner was enrolled in an ANSI Z88.2 1969 compliant respiratory protection program and was wearing an approved respirator. The abatement date has been set to allow the operator time to install engineering controls needed to reduce the exposure to less than the TLV.</p> <p>Standard 56.5001(a)/.5005 was cited 1 time in two years at mine 7654312 (1 to the operator, 0 to a contractor).</p> <p style="text-align: right;">See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/></p>				
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 56.5001(a)/.5005	
<b>Section II--Inspector's Evaluation</b>				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input checked="" type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input checked="" type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104 (a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>				E. Citation/ Order Number
				F. Dated Mo Da Yr
15. Area or Equipment				
16. Termination Due				
A. Date	Mo Da Yr 4/6/2023	B. Time (24 Hr. Clock)	1230	
<b>Section III--Termination Action</b>				
17. Action to Terminate				
18. Terminated				
A. Date	Mo Da Yr	B. Time (24 Hr. Clock)		
<b>Section IV--Automated System Data</b>				
19. Type of Inspection (activity code)	B01	20. Event Number	1234567	21. Primary or Mill P
22. AR Name Copper Pot			23. AR Number 12345	
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>				

## Sample Section 104(a) Citation – Respirable Dust Non-S&S Termination

Mine Citation/Order  
Continuation



Section I--Subsequent Action/Continuation Data

1. Subsequent Action 1 a. Continuation <input checked="" type="checkbox"/> <input type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 03/13/2023	3. Citation/ Order Number 7654356 - 01
4. Served To Nancy Doe, Mine Manager		5. Operator Academy Mining Company
6. Mine Blue Falcon Sand and Gravel Mine		7. Mine ID (Contractor) 76-54312

Section II--Justification for Action

The Dry Plant Operator was resampled on 04/09/2023 and the shift-weighted average to respirable silica-bearing dust was determined to be 0.44 mg/m<sup>3</sup>. This shift-weighted average is less than the Threshold Limit Value (TLV) of 0.59 mg/m<sup>3</sup>. The operator has implemented the following engineering controls by installing upgraded seals on the Dry Plant Operator's control booth and installing ventilation hoods on the product transfer points and screens. The Dry Plant Operator's exposure to respirable silica-bearing dust has been reduced below the TLV, terminating this citation.

See Continuation Form

Section III--Subsequent Action Taken

8. Extended To	A. Date Mo Da Yr	B. Time (24 Hr. Clock)	<input type="checkbox"/> C. Vacated	<input checked="" type="checkbox"/> D. Terminated	<input type="checkbox"/> E. Modified
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Section IV--Inspection Data

9. Type of Inspection E01	10. Event Number 1234567		
11. AR Name Copper Pot	AR Number 12345	12. Date Mo Da Yr 04/13/2023	13. Time (24 Hr. Clock) 14:18

MSHA Form 7000-3a, Mar 85 (revised)

## **Section 104(a): Citation – Respirable Dust S&S**

### **Form 7000-3 Guidance: Section 104(a) Citation – Respirable Dust S&S**

**Item 1.** Enter the citation issuance date. In most cases, this is also the date the inspector received the sample results and determined that a violation occurred.

**Note:** The occurrence date in IAS is the sample date. If the inspector receives sample results on the same date, the issue date and occurrence date may be the same.

**Item 8.** List the respirable dust concentration, TLV, and error factor for dust. The Pittsburgh Safety and Health Technology Center laboratory will provide the concentration, TLV, and error factor. List the mechanism that produced the dust (mechanical).

**Note:** When issuing an extension, use the Continuation Form 7000-3a. In Section II – Justification for Action note the operator’s actions that support the extension, along with a statement explaining that the extension will allow the operator to install engineering and/or implement administrative controls.

**Note:** When terminating any citation, use the Continuation Form 7000-3a. For any citation where the operator has installed engineering and/or implemented administrative controls to reduce exposure, list all controls in the Continuation Form’s Section II – Justification for Action.

## **Section 104(b): Order of Withdrawal – Respirable Dust Failure to Abate**

Consult the District prior to issuing a § 104(b) order for failing to install engineering and/or implement administrative controls.

## **Section 104(a): Citation – Respirable Dust Working in the Face of the Section 104(b) Order**

Consult the District prior to issuing a § 104(b) order for failing to install engineering and/or implement administrative controls.

# Sample Section 104(a) Citation – Respirable Dust S&S

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 3/27/2023	2. Time (24 Hr. Clock) 1100		3. Citation/ Order Number 7654357
4. Served To	Nancy Doe, Mine Manager		5. Operator Academy Mining Company	
6. Mine	Blue Falcon Sand and Gravel Mine		7. Mine ID 76-54312 (Contractor)	
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>The Dry Plant Operator was exposed to a shift-weighted average of 0.29 mg/m3 of respirable silica-bearing dust on 03/20/2023 when working in the screener area. This exceeded the TLV of 0.25 mg/m3 times the error factor (1.2 for respirable free silica dust sampling and analysis). A Respiratory Protection Program meeting the requirements of ANSI Z88.2 1969 was not in place. The abatement date has been set to allow the operator time to enroll all effected miners in a compliant respiratory protection program. The mine operator must establish engineering controls to reduce the silica-bearing dust exposure to less than the TLV.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 56.5001 (a) / 56.5005	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input checked="" type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104 (a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>				E. Citation/ Order Number
				F. Dated Mo Da Yr
15. Area or Equipment				
16. Termination Due				
A. Date	Mo Da Yr 4/10/2023	B. Time (24 Hr. Clock)	1100	
Section III--Termination Action				
17. Action to Terminate				
18. Terminated				
A. Date	Mo Da Yr	B. Time (24 Hr. Clock)		
Section IV--Automated System Data				
19. Type of Inspection (activity code) E01		20. Event Number 1234567		21. Primary or Mill P
22. AR Name Copper Pot				23. AR Number 12345
<p>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</p>				

## Sample Section 104(a) Citation – Respirable Dust S&S Extension

Mine Citation/Order Continuation					
<b>Section I—Subsequent Action/Continuation Data</b>					
<b>1. Subsequent Action 1a. Continuation</b> <input checked="" type="checkbox"/> <input type="checkbox"/>	<b>2. Dated (Original Issue)</b>	Mo Da Yr 03/27/2023	<b>3. Citation/Order Number</b>	7654357 - 01	
<b>4. Served To</b> Nancy Doe, Mine Manager			<b>5. Operator</b> Academy Mining Company		
<b>6. Mine</b> Blue Falcon Sand and Gravel Mine			<b>7. Mine ID</b> 76-54312 (Contractor)		
<b>Section II—Justification for Action</b>					
<p>The mine operator has enrolled affected miners in an ANSI Z88.2 1969 compliant respiratory protection program. The affected miner is wearing a properly fitted and approved respirator (MSA COMFO II, Approval Number TC-21C-134). This citation is being extended to allow the operator time to install engineering controls. The affected miners shall continue to wear the approved respirator while working in the Dry Plant until engineering controls have been implemented and further sampling by MSHA confirms the exposure is less than the Threshold Limit Value (TLV) times the error factor.</p>					
See Continuation Form <input type="checkbox"/>					
<b>Section III—Subsequent Action Taken</b>					
<b>8. Extended To</b>	A. Date	Mo Da Yr 04/19/2023	B. Time (24 Hr. Clock) 11:00	<input type="checkbox"/> C. Vacated <input type="checkbox"/> D. Terminated <input type="checkbox"/> E. Modified	
<b>Section IV—Inspection Data</b>					
<b>9. Type of Inspection</b> E01			<b>10. Event Number</b> 1234567		
<b>11. AR Name</b> Copper Pot		<b>AR Number</b> 12345	<b>12. Date</b> Mo Da Yr 04/10/2023	<b>13. Time (24 Hr. Clock)</b> 11:05	
MSHA Form 7000-3a, Mar 85 (revised)					

## Sample Section 104(a) Citation – Respirable Dust S&S Termination

Mine Citation/Order Continuation									
Section I—Subsequent Action/Continuation Data									
1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/> <input type="checkbox"/>	2. Dated (Original Issue)	Mo	Da	Yr	3. Citation/ Order Number	7654357 - 02			
4. Served To Nancy Doe, Mine Manager				5. Operator Academy Mining Company					
6. Mine Blue Falcon Sand and Gravel Mine				7. Mine ID (Contractor) 76-54312					
Section II—Justification for Action									
<p>The Dry Plant Operator was resampled on 04/09/2023 and the shift-weighted average to respirable silica-bearing dust was determined to be 0.44 mg/m<sup>3</sup>. This shift-weighted average is less than the Threshold Limit Value (TLV) of 0.59 mg/m<sup>3</sup>. The mine operator has enrolled the affected miners in an ANSI Z88.2 1969 compliant respiratory protection. The operator has implemented the following engineering controls by installing upgraded seals on the Dry Plant Operator's control booth and installing ventilation hoods on the product transfer points and screens. The Dry Plant Operator's exposure to respirable silica-bearing dust has been reduced below the TLV, terminating this citation.</p>									
See Continuation Form <input type="checkbox"/>									
Section III—Subsequent Action Taken									
8. Extended To		A. Date	Mo	Da	Yr	B. Time (24 Hr. Clock)	<input type="checkbox"/> C. Vacated	<input checked="" type="checkbox"/> D. Terminated	<input type="checkbox"/> E. Modified
Section IV—Inspection Data									
9. Type of Inspection E01			10. Event Number 1234567						
11. AR Name Copper Pot		AR Number 12345		12. Date Mo Da Yr 04/21/2023		13. Time (24 Hr. Clock) 09:34			
MSHA Form 7000-3a, Mar 85 (revised)									

## Sample Section 104(b) Order of Withdrawal – Respirable Dust Failure to Abate

Mine Citation/Order		<b>U.S. Department of Labor</b> Mine Safety and Health Administration	
			
Section I--Violation Data			
1. Date	Mo Da Yr 4/11/2023	2. Time (24 Hr. Clock) 0800	3. Citation/ Order Number 7654375
4. Served To	Nancy Doe, Mine Manager		5. Operator Academy Mining Company
6. Mine	Blue Falcon Sand and Gravel Mine		7. Mine ID 76-54312 (Contractor)
8. Condition or Practice			8a. Written Notice (103g) <input type="checkbox"/>
There is no justification to further extend this citation. The mine operator has made no attempt to install engineering controls in the screen area that would reduce the Dry Plant Operator's exposure to respirable silica-bearing dust. Miners performing the Dry Plant Operator occupation are removed from the area and miners are not allowed to perform the duties of the Dry Plant Operator. When the mine operator can demonstrate efforts to reduce the Dry Plant Operators' exposure to respirable silica-bearing dust by engineering controls and administrative means, this order may be modified to allow the Dry Plant Operator occupation to resume.			
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>			
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 56.5001 (a) / 56.5005
Section II--Inspector's Evaluation			
10. Gravity:			
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>			
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>			
C. Significant and Substantial: Yes <input type="checkbox"/> No <input type="checkbox"/>			D. Number of Persons Affected:
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>			
12. Type of Action 104 (b)		13. Type of Issuance (check one) Citation <input type="checkbox"/> Order <input checked="" type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>	
14. Initial Action A. Citation <input checked="" type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>		E. Citation/ Order Number 7654374	F. Dated Mo Da Yr 3/28/2023
15. Area or Equipment Dry plant screen area			
16. Termination Due		A. Date Mo Da Yr	B. Time (24 Hr. Clock)
Section III--Termination Action			
17. Action to Terminate			
18. Terminated		A. Date Mo Da Yr	B. Time (24 Hr. Clock)
Section IV--Automated System Data			
19. Type of Inspection (activity code) E01		20. Event Number 1234567	21. Primary or Mill P
22. AR Name Copper Pot			23. AR Number 12345
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>			

# Sample Section 104(a) Citation – Respirable Dust Working in the Face of the Section 104(b) Order

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 5/1/2023	2. Time (24 Hr. Clock) 0830		3. Citation/ Order Number 7654376
4. Served To	Nancy Doe, Mine Manager		5. Operator Academy Mining Company	
6. Mine	Blue Falcon Sand and Gravel Mine		7. Mine ID 76-54312 (Contractor)	
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>The mine operator was issued a 104(b) Order Failure to Abate, number: 7654375 to remove miners conducting the Dry Plant Operators' duties from the screen area on 4/11/2023. Miners were observed conducting Dry Plant Operators' job function on 5/01/2023. The mine operator has not complied with the Order of withdraw.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act 104 (b)	C. Part/Section of Title 30 CFR	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input checked="" type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input checked="" type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input checked="" type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104 (a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			E. Citation/ Order Number	
			F. Dated Mo Da Yr	
15. Area or Equipment				
16. Termination Due				
A. Date	Mo Da Yr 5/1/2023	B. Time (24 Hr. Clock) 0835		
Section III--Termination Action				
17. Action to Terminate				
18. Terminated				
A. Date	Mo Da Yr	B. Time (24 Hr. Clock)		
Section IV--Automated System Data				
19. Type of Inspection (activity code) E01		20. Event Number 1234567		21. Primary or Mill P
22. AR Name Copper Pot				23. AR Number 12345
<p>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</p>				

## **Section 104(a): Citation – Radon S&S**

### **Form 7000-3 Guidance: Section 104(a) Citation – Radon S&S**

**Item 1.** Enter the citation issuance date. In most cases, this is also the date the inspector received the sample results and determined that a violation occurred.

**Note:** The occurrence date in IAS is the sample date. If the inspector receives sample results on the same date, the issue date and occurrence date may be the same.

**Item 8.** As part of the narrative, specify whether the sampled miner wore appropriate respiratory protection and was enrolled in a compliant Respiratory Protection Program.

**Item 10A.** “Unlikely” vs “Reasonably Likely” depends on whether the miner wore appropriate respiratory protection.

**Item 10B.** Radon is a known cause of lung cancer, which can lead to permanent disability and is often fatal.

**Note:** When terminating any citation, use the Continuation Form 7000-3a. For any citation where the operator has installed engineering and/or implemented administrative controls to reduce exposure, list all controls in the Continuation Form’s Section II – Justification for Action.

# Sample Section 104(a) Citation – Radon S&S

Mine Citation/Order		<b>U.S. Department of Labor</b> <b>Mine Safety and Health Administration</b>		
<b>Section I--Violation Data</b>				
1. Date	Mo Da Yr 4/27/2023	2. Time (24 Hr. Clock) 1500	3. Citation/ Order Number 7654360	
4. Served To	Joanna Doe, Mine Superintendent		5. Operator Academy Mining Company	
6. Mine	Blue Falcon #10 Underground Mine		7. Mine ID 76-01200 (Contractor)	
8. Condition or Practice			8a. Written Notice (103g) <input type="checkbox"/>	
<p>The #33 Shuttle Car Operator in the #5 Section was exposed to the atmosphere containing 2.1 WL of Radon Daughters on 4/27/2023. This exceeded the maximum permissible exposure limit of 1.00 WL times the error factor (1.20) for Radon Daughter sampling. Several sections of ventilation tubing were damaged, and the #8 booster fan was not on. The miner was not wearing a respirator. The mine operator must ensure that all miners working in the #5 Section wear respiratory protection and enrolled in a respiratory protection program in compliance with ANSI Z88.2 1969.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 57.5039	
<b>Section II--Inspector's Evaluation</b>				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input checked="" type="checkbox"/>				
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input checked="" type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104 (a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			E. Citation/ Order Number	
			F. Dated Mo Da Yr	
15. Area or Equipment				
16. Termination Due				
A. Date	Mo Da Yr 5/1/2023	B. Time (24 Hr. Clock)	1500	
<b>Section III--Termination Action</b>				
17. Action to Terminate				
18. Terminated				
A. Date	Mo Da Yr	B. Time (24 Hr. Clock)		
<b>Section IV--Automated System Data</b>				
19. Type of Inspection (activity code) E01		20. Event Number 1234574		21. Primary or Mill P
22. AR Name Copper Pot			23. AR Number 12345	
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>				

## Sample Section 104(a) Citation – Radon S&S Termination

Mine Citation/Order Continuation					
Section I—Subsequent Action/Continuation Data					
1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/> <input type="checkbox"/>		2. Dated (Original Issue) Mo Da Yr 04/27/2023		3. Citation/Order Number 7654360 - 01	
4. Served To Joanna Doe, Mine Superintendent			5. Operator Academy Mining Company		
6. Mine Blue Falcon #10 Underground Mine			7. Mine ID 76-01200 (Contractor)		
Section II—Justification for Action					
<p>The #8 booster fan was turned on and the ventilation tubing was repaired, and a resample was taken lowering the concentration of Radon Daughter under the permissible exposure limit. The shuttle car operator was exposed to an atmosphere containing 0.10 WL of Radon Daughters when resampled on 4/29/2023. During the resampling, all the miners were wearing an approved respirator that had been fit-tested. The amount is less than the maximum permissible exposure limit of 1.00 WL times the error factor of (1.20) for Radon Daughter sampling.</p>					
Section III—Subsequent Action Taken					
8. Extended To		A. Date Mo Da Yr		B. Time (24 Hr. Clock)	
				<input type="checkbox"/> C. Vacated <input checked="" type="checkbox"/> D. Terminated <input type="checkbox"/> E. Modified	
Section IV—Inspection Data					
9. Type of Inspection		10. Event Number			
E01		1234574			
11. AR Name		AR Number	12. Date Mo Da Yr		13. Time (24 Hr. Clock)
Copper Pot		12345	05/01/2023		13:12
MSHA Form 7000-3a, Mar 85 (revised)					

## **Section 104(a): Citation – Drill Dust Control Non-S&S**

### **Form 7000-3 Guidance: Section 104(a) Citation – Drill Dust Control Non-S&S**

**Item 8.** Describe the dust condition that led to the determination that drill dust controls were ineffective. Include details on the material being drilled (soluble or non-water soluble); why current dust controls were ineffective; whether the miner sampled wore appropriate respiratory protection; and whether the miner was enrolled in a compliant Respiratory Protection Program.

**Note:** The inspector's observations determine effectiveness of drill dust controls.

**Item 10A.** "Unlikely" vs "Reasonably Likely" depends on whether the material being drilled could contain respirable crystalline silica-bearing dust. Check the sampling history for the mine and the geology of the material being drilled. The determination will be "Unlikely" if the miner is wearing appropriate respiratory protection.

**Item 10B.** If respirable crystalline silica-bearing dust is present, then silicosis is a possibility. Silicosis is a permanent disability and is often fatal.

**Note:** When terminating any citation, use the Continuation Form 7000-3a. For any citation where the operator has installed engineering and/or implemented administrative controls to reduce exposure, list all controls in the Continuation Form's Section II – Justification for Action.

## Sample Section 104(a) Citation – Drill Dust Control Non-S&S

Mine Citation/Order		<b>U.S. Department of Labor</b> <b>Mine Safety and Health Administration</b>	
<b>Section I--Violation Data</b>			
1. Date	Mo Da Yr 4/15/2023	2. Time (24 Hr. Clock) 1530	3. Citation/ Order Number 7654361
4. Served To Nancy Doe, Mine Manager		5. Operator Academy Mining Company	
6. Mine Blue Falcon Sand and Gravel Mine		7. Mine ID 76-54312 (Contractor)	
8. Condition or Practice			8a. Written Notice (103g) <input type="checkbox"/>
<p>On 4/15/2023 the drilling operation taking place in the #2 North Pit was observed creating excessive dust. The dust exhaust system on the Furukawa 1017 drill was not effective. The drill misting system was not being used. Several pieces of the dust collector collar apron were missing, and the drilling mist system was out of water. The drilling operator was not wearing a respirator. This condition exposed the driller operator and his helper to excessive dust during the drilling operations.</p>			
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>			
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 58.620
<b>Section II--Inspector's Evaluation</b>			
10. Gravity:			
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input checked="" type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>			
B. Injury or Illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input checked="" type="checkbox"/> Fatal <input type="checkbox"/>			
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			D. Number of Persons Affected: 002
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input checked="" type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>			
12. Type of Action 104 (a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>	
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>		E. Citation/ Order Number	F. Dated Mo Da Yr
15. Area or Equipment			
16. Termination Due			
A. Date	Mo Da Yr 4/15/2023	B. Time (24 Hr. Clock)	2230
<b>Section III--Termination Action</b>			
17. Action to Terminate The dust exhaust system on the Furukawa 1017 drill was repaired. The water was added to the tank and the drill mist system was turned on and function correctly. The dust controls on the drill are now effective.			
18. Terminated	A. Date Mo Da Yr 4/15/2023	B. Time (24 Hr. Clock)	2230
<b>Section IV--Automated System Data</b>			
19. Type of Inspection (activity code)	B01	20. Event Number 1234567	21. Primary or Mill P
22. AR Name Copper Pot			23. AR Number 12345
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>			

## **Section 104(a): Citation – Diesel Particulate Matter (DPM) Non-S&S**

### **Form 7000-3 Guidance: Section 104(a) Citation – DPM Non-S&S**

**Item 1.** Enter the citation issuance date. In most cases, this is also the date the inspector received the sample results and determined that a violation occurred.

**Note:** The occurrence date in IAS is the sample date. If the inspector receives sample results on the same date, the issue date and occurrence date may be the same.

**Item 8.** As part of the narrative, specify whether the sampled miner wore appropriate respiratory protection and was enrolled in a compliant Respiratory Protection Program.

**Item 10A.** “Unlikely” vs “Reasonably Likely” depends on whether the miner wore appropriate respiratory protection; wearing appropriate respiratory protection should assess as “Unlikely.”

**Item 10B.** DPM is a known cause of lung cancer, which can lead to permanent disability and is often fatal.

**Note:** When terminating any citation, use the Continuation Form 7000-3a. For any citation where the operator has installed engineering and/or implemented administrative controls to reduce exposure, list all controls in the Continuation Form’s Section II – Justification for Action.

# Sample Section 104(a) Citation – DPM Non-S&S

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 4/24/2023	2. Time (24 Hr. Clock) 1535		3. Citation/ Order Number 7654362
4. Served To Joanna Doe, Mine Superintendent		5. Operator Academy Mining Company		
6. Mine Blue Falcon #10 Underground Mine		7. Mine ID 76-01200 (Contractor)		
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>On 4/20/2023 the scaler operator was exposed to an equivalent 8-hour SWA of Total Carbon (as Elemental Carbon) of 293 ug/m3. This exposure exceeded the Diesel Particulate Matter TC PEL of 160 ug/m3 time the sampling and analytical error factor of 176 ug/m3. The miner was wearing an approved respirator that was fit-tested. A Respiratory Protection Program meeting the requirements of 30 CFR 57.5060(d) was in place. All controls were not being used to reduce the miner's exposure.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 57.5060 (b) (3)	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input checked="" type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input checked="" type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104 (a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>		E. Citation/ Order Number		F. Dated Mo Da Yr
15. Area or Equipment				
16. Termination Due				
A. Date	Mo Da Yr 4/28/2023	B. Time (24 Hr. Clock)	1500	
Section III--Termination Action				
17. Action to Terminate				
18. Terminated				
A. Date	Mo Da Yr	B. Time (24 Hr. Clock)		
Section IV--Automated System Data				
19. Type of Inspection (activity code) E01		20. Event Number 1234574		21. Primary or Mill P
22. AR Name Copper Pot				23. AR Number 12345
<p>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</p>				

## Sample Section 104(a) Citation – DPM Non-S&S Termination

Mine Citation/Order  
Continuation



Section I—Subsequent Action/Continuation Data

1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/> <input type="checkbox"/>	2. Dated (Original Issue) 04/24/2023	Mo Da Yr	3. Citation/ Order Number 7654362 - 01
4. Served To Joanna Doe, Mine Superintendent		5. Operator Academy Mining Company	
6. Mine Blue Falcon #10 Underground Mine		7. Mine ID (Contractor) 76-01200	

Section II—Justification for Action

The mine operator has upgraded the underground ventilation and has started using 80/20 biodiesel fuel. The scaler operator's exposure level is now below the Diesel Particulate Matter TC PEL.

Section III—Subsequent Action Taken

8. Extended To	A. Date Mo Da Yr	B. Time (24 Hr. Clock)	<input type="checkbox"/> C. Vacated	<input checked="" type="checkbox"/> D. Terminated	<input type="checkbox"/> E. Modified
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Section IV—Inspection Data

9. Type of Inspection E01	10. Event Number 1234574		
11. AR Name Copper Pot	AR Number 12345	12. Date Mo Da Yr 05/01/2023	13. Time (24 Hr. Clock) 11:25

MSHA Form 7000-3a, Mar 85 (revised)

## **Section 104(a): Citation – Diesel Particulate Matter (DPM) S&S**

### **Form 7000-3 Guidance: Section 104(a) Citation – DPM S&S**

**Item 1.** Enter the citation issuance date. In most cases, this is also the date the inspector received the sample results and determined that a violation occurred.

**Note:** The occurrence date in IAS is the sample date. If the inspector receives sample results on the same date, the issue date and occurrence date may be the same.

**Item 8.** As part of the narrative, specify whether the sampled miner wore appropriate respiratory protection and was enrolled in a compliant Respiratory Protection Program.

**Item 10A.** “Unlikely” vs “Reasonably Likely” depends on whether the miner wore appropriate respiratory protection; lack of appropriate respiratory protection should assess as “Reasonably Likely.”

**Item 10B.** DPM is a known cause of lung cancer, which can lead to permanent disability and is often fatal.

**Note:** When issuing an extension, use the Continuation Form 7000-3a. In Section II – Justification for Action note the operator’s actions that support the extension, along with a statement explaining that the extension will allow the operator to install engineering and/or implement administrative controls.

**Note:** When terminating any citation, use the Continuation Form 7000-3a. For any citation where the operator has installed engineering and/or implemented administrative controls to reduce exposure, list all controls in the Continuation Form’s Section II – Justification for Action.

# Sample Section 104(a) Citation – DPM S&S

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 4/25/2023	2. Time (24 Hr. Clock) 1448	3. Citation/ Order Number 7654363	
4. Served To Joanna Doe, Mine Superintendent		5. Operator Academy Mining Company		
6. Mine Blue Falcon #10 Underground Mine		7. Mine ID 76-01200 (Contractor)		
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>On 4/20/2023 the front end-loader operator (H3456) was exposed to an equivalent 8-hour SWA of adjusted Total Carbon of 239 ug/m3. This validated exposure exceeded the Diesel Particulate Matter TC PEL of 160 ug/m3 times the sampling and analytical error factor for one area sample or 202 ug/m3. Respiratory protection was not being used and a Respiratory Protection Program meeting the requirements of 30 CFR 57.5060(d) was not in place. All feasible controls were not in use to control the employee's diesel particulate exposure. When a Respiratory Protection Program is in place the abatement date will be extended to allow the mine operator time to install controls.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 57.5060 (b) (3)	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input checked="" type="checkbox"/>				
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104 (a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>		E. Citation/ Order Number		F. Dated Mo Da Yr
15. Area or Equipment				
16. Termination Due				
A. Date	Mo Da Yr 4/28/2023	B. Time (24 Hr. Clock) 0700		
Section III--Termination Action				
17. Action to Terminate				
18. Terminated				
A. Date	Mo Da Yr	B. Time (24 Hr. Clock)		
Section IV--Automated System Data				
19. Type of Inspection (activity code) E01		20. Event Number 1234574		21. Primary or Mill P
22. AR Name Copper Pot				23. AR Number 12345
<p>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</p>				

## Sample Section 104(a) Citation – DPM S&S Extension

Mine Citation/Order Continuation					
<b>Section I—Subsequent Action/Continuation Data</b>					
1. Subsequent Action 1a, Continuation <input checked="" type="checkbox"/> <input type="checkbox"/>	2. Dated (Original Issue)	Mo Da Yr 04/25/2023	3. Citation/Order Number 7654363 - 01		
4. Served To Joanna Doe, Mine Superintendent			5. Operator Academy Mining Company		
6. Mine Blue Falcon #10 Underground Mine			7. Mine ID (Contractor) 76-01200		
<b>Section II—Justification for Action</b>					
<p>The mine operator has enrolled effected miners in a Respiratory Protection Program that is compliant with 30 CFR 57.5060(d). The citation is being extended to allow the mine operator time to install controls that will reduce the exposure level below the Diesel Particulate Matter TC PEL.</p>					
<b>Section III—Subsequent Action Taken</b>					
8. Extended To	A. Date Mo Da Yr 05/01/2023	B. Time (24 Hr. Clock) 07:00	<input type="checkbox"/> C. Vacated <input type="checkbox"/> D. Terminated <input type="checkbox"/> E. Modified		
<b>Section IV—Inspection Data</b>					
9. Type of Inspection E01		10. Event Number 1234574			
11. AR Name Copper Pot		AR Number 12345	12. Date Mo Da Yr 04/28/2023	13. Time (24 Hr. Clock) 07:00	
MSHA Form 7000-3a, Mar 85 (revised)					

## Sample Section 104(a) Citation – DPM S&S Termination

Mine Citation/Order  
Continuation



Section I—Subsequent Action/Continuation Data

1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/> <input type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 04/25/2023	3. Citation/ Order Number 7654363 - 02
4. Served To Joanna Doe, Mine Superintendent		5. Operator Academy Mining Company
6. Mine Blue Falcon #10 Underground Mine		7. Mine ID (Contractor) 76-01200

Section II—Justification for Action

The mine operator has upgraded the underground ventilation and has started using 80/20 biodiesel fuel. The front end-loader operator's exposure level is now below the Diesel Particulate Matter TC PEL. This citation is terminated.

Section III—Subsequent Action Taken

8. Extended To	A. Date Mo Da Yr	B. Time (24 Hr. Clock)	<input type="checkbox"/> C. Vacated	<input checked="" type="checkbox"/> D. Terminated	<input type="checkbox"/> E. Modified
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Section IV—Inspection Data

9. Type of Inspection E01	10. Event Number 1234574		
11. AR Name Copper Pot	AR Number 12345	12. Date Mo Da Yr 05/01/2023	13. Time (24 Hr. Clock) 15:12

MSHA Form 7000-3a, Mar 85 (revised)

**Section 104(a): Citation – Dust, Gas, Mist, and Fume Surveys Underground (.5002) S&S**

**Form 7000-3 Guidance: Section 104(a) Citation – DPM S&S**

**Item 8.** Describe the area and/or miner sampled and the sampling method. List the sample concentration, the sample method error factor, and TLV for the contaminant. If applicable, note whether the miner wore appropriate respiratory protection and was enrolled in a compliant Respiratory Protection Program.

**Item 10A.** “Unlikely” vs “Reasonably Likely” depends on the miner’s potential exposure (length and/or concentration) to the contaminant.

**Item 10B.** The degree of injury or illness depends on the potential health effect of the contaminant at the sampled level of exposure.

# Sample Section 104(a) Citation – Dust, Gas, Mist, and Fume Surveys Underground (.5002) S&S

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
<b>Section I--Violation Data</b>				
1. Date	Mo Da Yr 4/19/2023	2. Time (24 Hr. Clock)	0648	3. Citation/ Order Number 7654364
4. Served To	Joanna Doe, Mine Superintendent		5. Operator Academy Mining Company	
6. Mine	Blue Falcon #10 Underground Mine		7. Mine ID	76-01200 (Contractor)
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>The mine operator was not conducting dust, gas, mist, and fume surveys underground to ensure that provided ventilation controls were adequate to prevent exposure to mine gases. Elevated contaminant levels were measured in the South 10 drift with an MX6 multi-gas detector at the time of inspection.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR	57.5002
<b>Section II--Inspector's Evaluation</b>				
10. Gravity:				
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or Illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input checked="" type="checkbox"/>				
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one)	A. None <input type="checkbox"/>	B. Low <input type="checkbox"/>	C. Moderate <input checked="" type="checkbox"/>	D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>
12. Type of Action	104 (a)	13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action		E. Citation/ Order Number		F. Dated Mo Da Yr
A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>				
15. Area or Equipment				
16. Termination Due	A. Date Mo Da Yr 4/20/2023	B. Time (24 Hr. Clock) 0648		
<b>Section III--Termination Action</b>				
17. Action to Terminate The mine operator has established a sampling schedule for the mine gases to ensure that ventilation control devices minimize miners' exposure to their contaminant gases and that gases are diluted, rendered harmless, and carried away in a safe manner.				
18. Terminated	A. Date Mo Da Yr 4/19/2023	B. Time (24 Hr. Clock) 1630		
<b>Section IV--Automated System Data</b>				
19. Type of Inspection (activity code)	R01	20. Event Number 1234574	21. Primary or Mill P	
22. AR Name Copper Pot			23. AR Number 12345	
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>				

## **Section 104(a): Citation – Hazardous Gas (Carbon Monoxide (CO) Mine Gas) S&S**

### **Form 7000-3 Guidance: Section 104(a) Citation – Hazardous Gas (CO Mine Gas) S&S**

**Item 1.** Enter the citation issuance date. In most cases, this is also the date the inspector received the sample results and determined that a violation occurred.

**Note:** The occurrence date in IAS is the sample date. If the inspector receives sample results on the same date, the issue date and occurrence date may be the same.

**Item 8.** Describe the area and/or miner sampled and the sampling method. List the sample concentration, the sample method error factor, and TLV for the contaminant. If applicable, note whether the miner wore appropriate respiratory protection and was enrolled in a compliant Respiratory Protection Program.

**Item 10A.** “Unlikely” vs “Reasonably Likely” depends on the miner’s potential exposure (length and/or concentration) to the contaminant.

**Item 10B.** The degree of injury or illness depends on the potential health effect of the contaminant at the sampled level of exposure.

## Sample Section 104(a) Citation – Hazardous Gas (CO Mine Gas) S&S

Mine Citation/Order		<b>U.S. Department of Labor</b> <b>Mine Safety and Health Administration</b>	
Section I--Violation Data			
1. Date	Mo Da Yr 4/17/2023	2. Time (24 Hr. Clock) 1500	3. Citation/ Order Number 7654365
4. Served To Joanna Doe, Mine Superintendent		5. Operator Academy Mining Company	
6. Mine Blue Falcon #10 Underground Mine		7. Mine ID 76-01200 (Contractor)	
8. Condition or Practice			8a. Written Notice (103g) <input type="checkbox"/>
<p>The Carbon Monoxide level in South Drift #10 was 450 ppm for a duration of 15 minutes during the sampling with a calibrated MSA Altair Multi-gas Monitor. This exposes the loader operator in this drift to CO levels over the Permissible Excursion limit of 400 ppm for a 15-minute sampling period. The mechanical ventilation in this area was off during the loading operation when the sampling occurred.</p>			
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>			
9. Violation	A. Health Safety Other <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 57.5001 (a) / .5005
Section II--Inspector's Evaluation			
10. Gravity:			
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>			
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input checked="" type="checkbox"/>			
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>			
12. Type of Action 104 (a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>	
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			E. Citation/ Order Number
14. F. Dated Mo Da Yr			
15. Area or Equipment			
16. Termination Due		A. Date Mo Da Yr 4/17/2023	B. Time (24 Hr. Clock) 1520
Section III--Termination Action			
17. Action to Terminate The mine operator improved the ventilation by turning on the booster fan and diluting the CO level below the TLV. Also, they installed a sign to turn on the booster fan before commencing loading operations.			
18. Terminated		A. Date Mo Da Yr 4/17/2023	B. Time (24 Hr. Clock) 1510
Section IV--Automated System Data			
19. Type of Inspection (activity code) E01		20. Event Number 1234574	
21. Primary or Mill P		23. AR Number 12345	
22. AR Name Copper Pot			23. AR Number 12345
MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.			

**Section 104(a): S&S Citation with a Section 107(a) Order of Withdrawal – Hydrogen Chloride (HCl) Levels**

**Form 7000-3 Guidance: Section 104(a) S&S Citation with a Section 107(a) Order of Withdrawal – HCl Levels**

**Item 1.** Enter the citation issuance date. In most cases, this is also the date the inspector received the sample results and determined that a violation occurred.

**Note:** The occurrence date in IAS is the sample date. If the inspector receives sample results on the same date, the issue date and occurrence date may be the same.

**Item 8.** Describe the area and/or miner sampled and the sampling method. List the sample concentration, the sample method error factor, and TLV for the contaminant. If applicable, note whether the miner wore appropriate respiratory protection and was enrolled in a compliant Respiratory Protection Program.

**Item 10A.** “Unlikely” vs “Reasonably Likely” depends on the miner’s potential exposure (length and/or concentration) to the contaminant.

**Item 10B.** The degree of injury or illness depends on the potential health effect of the contaminant at the sampled level of exposure.

## Sample Section 107(a) Order of Withdrawal – HCI Levels

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 4/25/2023	2. Time (24 Hr. Clock)	0828	
3. Citation/Order Number		7654366		
4. Served To		Becky Mill, Laboratory Supervisor		
5. Operator		Academy Mining Company		
6. Mine		Blue Falcon #10 Underground Mine		
7. Mine ID		76-01200 (Contractor)		
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>An oral 107(a) imminent danger order was issued to Becky Mills, the laboratory supervisor at the Assay laboratory at 08:28 AM on this date for the following reasons:</p> <p>A laboratory technician was handling hot acid in the Assay laboratory where the measured hydrogen chloride levels were 35 ppm (parts per million), which is almost at the Immediately Dangerous to Life and Health (IDLH) level of 50 ppm. A sample was taken in the operator's work area for an hour with a Drager Diffusion Tube. The measured exposure was approaching the fatal levels. The ceiling limit for hydrogen chloride is 5 ppm. The technician was removed from the lab when levels exceeded the ceiling limit of 5 ppm. The technician was not wearing respiratory protection and complained of eye and throat irritation.</p> <p>Citation No. 7654367 is being issued in conjunction with an Imminent Danger Order. This condition or practice is an imminent danger.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected:
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action		13. Type of Issuance (check one)		
107 (a)		Citation <input type="checkbox"/> Order <input checked="" type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action				F. Dated
A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>				Mo Da Yr
15. Area or Equipment				
Nancy Doe, Laboratory Technician was removed from the lab.				
16. Termination Due		A. Date Mo Da Yr		
		B. Time (24 Hr. Clock)		
Section III--Termination Action				
17. Action to Terminate				
18. Terminated		A. Date Mo Da Yr		
		B. Time (24 Hr. Clock)		
Section IV--Automated System Data				
19. Type of Inspection (activity code)		20. Event Number		21. Primary or Mill
E01		1234574		M
22. AR Name				23. AR Number
Copper Pot				12345
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>				

# Sample Section 104(a) S&S Citation in Conjunction with a Section 107(a) Order – HCl Levels

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 4/25/2023	2. Time (24 Hr. Clock)	0829	
3. Citation/Order Number		7654367		
4. Served To	Becky Mill, Laboratory Supervisor		5. Operator Academy Mining Company	
6. Mine	Blue Falcon #10 Underground Mine		7. Mine ID	76-01200 (Contractor)
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>A laboratory technician was handling hot acid in the Assay laboratory where the measured hydrogen chloride levels were 35 ppm (parts per million), which is almost at the Immediately Dangerous to Life and Health (IDLH) level of 50 ppm. A sample was taken in the operator's work area for an hour with a Drager Diffusion Tube. The measured exposure was approaching the fatal levels. The ceiling limit for hydrogen chloride is 5 ppm. The technician was removed from the lab when levels exceeded the ceiling limit of 5 ppm, and an oral imminent danger order was issued to Becky Mills, the laboratory supervisor, at 08:28 AM on this date. The technician was not wearing respiratory protection and complained of eye and throat irritation.</p> <p>This citation is being issued in conjunction with an Imminent Danger Order No. 7654366</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 57.5001 (a) / .5005	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input checked="" type="checkbox"/>				
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action		13. Type of Issuance (check one)		
104 (a)		Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action				F. Dated
A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>				Mo Da Yr
15. Area or Equipment				
16. Termination Due				
A. Date		B. Time (24 Hr. Clock)		
Mo Da Yr				
Section III--Termination Action				
17. Action to Terminate				
18. Terminated				
A. Date		B. Time (24 Hr. Clock)		
Mo Da Yr				
Section IV--Automated System Data				
19. Type of Inspection (activity code)		20. Event Number		21. Primary or Mill
E01		1234574		M
22. AR Name				23. AR Number
Copper Pot				12345
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>				

## **Section 104(a): Citation – Highwall Drill Dust Collection Non-S&S**

### **Form 7000-3 Guidance: Section 104(a) Citation – Highwall Drill Dust Collection Non-S&S**

**Item 8.** Describe the dust condition that led to the determination that the highwall drill dust collection was ineffective. Include details on the material being drilled (soluble or non-water soluble); why current dust collection was ineffective; whether the miner sampled wore appropriate respiratory protection; and whether the miner was enrolled in a compliant Respiratory Protection Program.

**Note:** The inspector's observations determine effectiveness of drill dust controls.

**Item 10A.** "Unlikely" vs "Reasonably Likely" depends on whether the material being drilled could contain respirable crystalline silica-bearing dust. Check the sampling history for the mine and the geology of the material being drilled. The determination will be "Unlikely" if the miner is wearing appropriate respiratory protection.

**Item 10B.** If respirable crystalline silica-bearing dust is present, then silicosis is a possibility. Silicosis is a permanent disability and is often fatal.

**Item 10C.** Per MSHA policy, an inspector cannot issue a citation for overexposure for a listed nuisance dust as S&S.

## Sample Section 104(a) Citation – Highwall Drill Dust Collection Non-S&S

Mine Citation/Order		<b>U.S. Department of Labor</b> Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 4/18/2023	2. Time (24 Hr. Clock) 1056		3. Citation/ Order Number 7654368
4. Served To	Jane Doe, Mine Manager		5. Operator Academy Mining Company, Inc.	
6. Mine	Cornish Mine		7. Mine ID 76-01111 (Contractor)	
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>The dust collection system provided on the Ingersoll Rand highwall drill (s/n: IR-123456) was not effective in controlling the dust produced during the drilling process. Visible dust was observed being emitted from beneath the drill table and a visible dust cloud was observed passing over the two blasters, loading holes nearby. An examination of the collection system revealed that the skirting material provided on the drill table was torn in several places and the bushing material between the drill steel and drill table needed replacement. This highwall drill was observed drilling holes along the #6 highwall bench.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health <input checked="" type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR  72.620	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input checked="" type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input checked="" type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>				D. Number of Persons Affected: 003
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104(a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			E. Citation/ Order Number	
15. Area or Equipment				
16. Termination Due				
A. Date	Mo Da Yr 4/18/2023	B. Time (24 Hr. Clock) 1330		
Section III--Termination Action				
17. Action to Terminate				
The drill was removed from service and skirting material was replaced. The drill steel bushing was also replaced.				
18. Terminated				
A. Date	Mo Da Yr 4/18/2023	B. Time (24 Hr. Clock) 1207		
Section IV--Automated System Data				
19. Type of Inspection (activity code) E01		20. Event Number 1234573		21. Primary or Mill
22. AR Name Copper Pot				23. AR Number 12345
MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20418. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.				

**Section 104(a): Citation – Designated Work Position (DWP) [30 C.F.R. § 71.100(b)]**

**Form 7000-3 Guidance: Section 104(a) Citation – DWP [30 C.F.R. § 71.100(b)]**

**Item 8.** Include complete details of the overexposure. Describe the DWP sampled and the sampling method. Use the lab analysis sheet for information within the citation and include it as an attachment.

# Sample Section 104(a) Citation – DWP [30 C.F.R. § 71.100(b)]

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
<b>Section I--Violation Data</b>				
1. Date	Mo Da Yr 4/20/2023	2. Time (24 Hr. Clock)	0923	
3. Citation/Order Number	7654369			
4. Served To	Jane Doe, Mine Manager		5. Operator	Academy Mining Company, Inc.
6. Mine	Cornish Mine		7. Mine ID	76-01111 (Contractor)
8. Condition or Practice			8a. Written Notice (103g) <input type="checkbox"/>	
<p>The result of a sample collected by an MSHA inspector on April 20, 2023, indicates the #3 Ingersoll Rand Highwall Drill Operator (Designated Work Position 002-0-384) has been exposed to a respirable dust concentration of 2.7 mg/m<sup>3</sup>, which exceeds the allowable exposure of 1.5 mg./m<sup>3</sup>. The sample was collected on the #3 Ingersoll Rand Drill (S/N 04-12345) which is normally operated on both day and afternoon shifts. The mine operator must take immediate actions to lower the exposure in the environment of the drill operator's work area(s) to 1.5 mg/m<sup>3</sup> or less and verify correction with a valid dust sample collected and submitted to the Pittsburgh Dust Processing Laboratory. A copy of the sample results accompanies this citation.</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health <input checked="" type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 71.100 (b)	
<b>Section II--Inspector's Evaluation</b>				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input checked="" type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected: 002
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action		13. Type of Issuance (check one)		
104 (a)		Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action				F. Dated
A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>				Mo Da Yr
15. Area or Equipment				
16. Termination Due				
A. Date	Mo Da Yr 5/11/2023	B. Time (24 Hr. Clock)	0923	
<b>Section III--Termination Action</b>				
17. Action to Terminate				
18. Terminated				
A. Date	Mo Da Yr	B. Time (24 Hr. Clock)		
<b>Section IV--Automated System Data</b>				
19. Type of Inspection (activity code)	E01	20. Event Number	1234573	
21. Primary or Mill				
22. AR Name			23. AR Number	
Copper Pot			12345	
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>				

**Section 104(a): Citation – Designated Occupation (DO) & Non-designated Occupation (NDO) [30 C.F.R. § 70.100(a)(2)]**

**Form 7000-3 Guidance: Section 104(a) Citation – DO & NDO [30 C.F.R. § 70.100(a)(2)]**

**Item 8.** Include complete details of the overexposure. Describe the DO/NDO sampled and the sampling method. Use the lab analysis sheet for information within the citation and include it as an attachment.

**Note:** When terminating any citation, use the Continuation Form 7000-3a. For any citation where the operator provides evidence of abatement, list all controls/implemented actions in the Continuation Form's Section II – Justification for Action.

## Sample Section 104(a) Citation – DO & NDO [30 C.F.R. § 70.100(a)(2)]

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
<b>Section I--Violation Data</b>				
1. Date	Mo Da Yr 4/11/2023	2. Time (24 Hr. Clock)	1020	3. Citation/ Order Number 7654370
4. Served To	Jane Doe, Mine Manager		5. Operator	Academy Mining Company, Inc.
6. Mine	Blue Falcon #2 Mine		7. Mine ID	76-01254 (Contractor)
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>Based on the result of a valid respirable dust sample collected by an inspector on (insert date sampled), the concentration of respirable dust in the working environment of the continuous mining machine operator (occupation 036), on the 001-0 MMU was 1.94 mg/m<sup>3</sup>. This concentration exceeds the 1.79 mg/m<sup>3</sup> ECV, and exceeds the 1.5 mg/m<sup>3</sup> standard.</p> <p>In accordance with 30 CFR 70.201(f), the District Manager requests the mine operator to submit, at least 48 hours prior to scheduled compliance sampling, a notification of the date and time sampling will begin.</p>				
				See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>
9. Violation	A. Health <input checked="" type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR	70.100 (a) (2)
<b>Section II--Inspector's Evaluation</b>				
10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input checked="" type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one)	A. None <input type="checkbox"/>	B. Low <input checked="" type="checkbox"/>	C. Moderate <input type="checkbox"/>	D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>
12. Type of Action	104 (a)	13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action		E. Citation/ Order Number		F. Dated Mo Da Yr
A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>				
15. Area or Equipment				
16. Termination Due	A. Date Mo Da Yr 4/25/2023	B. Time (24 Hr. Clock)	1020	
<b>Section III--Termination Action</b>				
17. Action to Terminate				
18. Terminated	A. Date Mo Da Yr	B. Time (24 Hr. Clock)		
<b>Section IV--Automated System Data</b>				
19. Type of Inspection (activity code)	E01	20. Event Number	1234572	21. Primary or Mill
22. AR Name	Copper Pot			23. AR Number 12345
<small>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</small>				

## Sample Section 104(a) Citation — DO & NDO [30 C.F.R. § 70.100(a)(2)] Termination

Mine Citation/Order Continuation					
<b>Section I—Subsequent Action/Continuation Data</b>					
<b>1. Subsequent Action 1a. Continuation</b> <input checked="" type="checkbox"/> <input type="checkbox"/>	<b>2. Dated (Original Issue)</b>	<b>Mo</b>	<b>Da</b>	<b>Yr</b>	<b>3. Citation/Order Number</b> 7654370 - 01
	04/11/2023				
<b>4. Served To</b> Jane Doe, Mine Manager			<b>5. Operator</b> Academy Mining Company, Inc.		
<b>6. Mine</b> Blue Falcon #2 Mine			<b>7. Mine ID</b> 76-01254 <span style="float: right;">(Contractor)</span>		
<b>Section II—Justification for Action</b>					
<p>The operator has submitted a valid respirable dust sample in the working environment of the continuous mining machine operator and has an approved ventilation plan revision with corrective actions for the 001-0 MMU.</p>					
					See Continuation Form <input type="checkbox"/>
<b>Section III—Subsequent Action Taken</b>					
<b>8. Extended To</b>	<b>A. Date</b>	<b>Mo</b>	<b>Da</b>	<b>Yr</b>	<b>B. Time (24 Hr. Clock)</b>
					<input type="checkbox"/> C. Vacated <input checked="" type="checkbox"/> D. Terminated <input type="checkbox"/> E. Modified
<b>Section IV—Inspection Data</b>					
<b>9. Type of Inspection</b> E01		<b>10. Event Number</b> 1234572			
<b>11. AR Name</b> Copper Pot		<b>AR Number</b> 12345	<b>12. Date</b>	<b>Mo</b>	<b>Da</b>
			05/02/2023		<b>Yr</b>
					<b>13. Time (24 Hr. Clock)</b> 10:29
<small>MSHA Form 7000-3a, Mar 85 (revised)</small>					

**Section 104(a): Citation – Part 90 Miner [30 C.F.R. § 90.100(b)]**

**Form 7000-3 Guidance: Section 104(a) Citation – Part 90 Miner [30 C.F.R. § 90.100(b)]**

**Item 8.** Include complete details of the overexposure. Describe the area/miner sampled and the sampling method. Use the lab analysis sheet for information within the citation and include it as an attachment.

## Sample Section 104(a) Citation – Part 90 Miner [30 C.F.R. § 90.100(b)]

Mine Citation/Order		U.S. Department of Labor Mine Safety and Health Administration		
Section I--Violation Data				
1. Date	Mo Da Yr 4/17/2023	2. Time (24 Hr. Clock) 1051	3. Citation/ Order Number	7654371
4. Served To Jane Doe, Mine Manager		5. Operator Academy Mining Company, Inc.		
6. Mine Blue Falcon #2 Mine		7. Mine ID 76-01254 (Contractor)		
8. Condition or Practice				8a. Written Notice (103g) <input type="checkbox"/>
<p>Based on the results of a valid single sample, full-shift CMDPSU respirable dust sample collected by MSHA on April 10, 2023, the concentration of respirable dust in the working environment of the Part 90 Miner, Occupation Code 101 working on the No. 1 beltline was 1.5 mg/m3. This sample exceeds the 0.74 mg/m3 ECV thereby exceeding the 0.5 mg/m3 applicable standard. The mine operator shall make available approved respiratory equipment to the affected miner, take immediate corrective action to lower the concentration of respirable dust to the permissible limit of 0.5 mg/m3, and sample the Part 90 miner, Occupation Code 101 each consecutive production shift until 5 valid samples are taken. The first of the 5 samples must be collected within 8 calendar days after the citation issue date</p>				
See Continuation Form (MSHA Form 7000-3a) <input type="checkbox"/>				
9. Violation	A. Health Safety <input checked="" type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 90.100 (b)	
Section II--Inspector's Evaluation				
10. Gravity:				
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input checked="" type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104 (a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			E. Citation/ Order Number	F. Dated Mo Da Yr
15. Area or Equipment				
16. Termination Due				
A. Date	Mo Da Yr 5/1/2023	B. Time (24 Hr. Clock) 1051		
Section III--Termination Action				
17. Action to Terminate				
18. Terminated				
A. Date	Mo Da Yr	B. Time (24 Hr. Clock)		
Section IV--Automated System Data				
19. Type of Inspection (activity code) E01		20. Event Number 1234572	21. Primary or Mill	
22. AR Name Copper Pot			23. AR Number 12345	
<p>MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.</p>				

## Noise Violations

When citing for excessive noise, use 30 C.F.R. Subchapter M, Part 62, Occupational Noise Exposure; the standard applies to both MNM and Coal.

### Section 104(a) Citation – Noise Action Level (AL) Non-S&S

#### Form 7000-3 Guidance: Section 104(a) Citation – Noise AL Non-S&S

**Item 1.** Enter the citation issuance date. In most cases, this is also the date the inspector received the sample results and determined that a violation occurred.

**Note:** The occurrence date in IAS is the sample date. If the inspector receives sample results on the same date, the issue date and occurrence date may be the same.

**Item 8.** Describe the area and/or miner sampled and the sampling method. Provide the details of the noise AL violation. If applicable, specify whether the miner wore appropriate hearing protection and was enrolled in a compliant Hearing Conservation Program.

**Item 10A.** Select “Unlikely.”

**Item 10B.** Noise induced hearing loss is always “Permanently Disabling.”

**Item 10C.** A citation for a violation of § 62.120 (Action Level) **cannot** be S&S.

**Note:** When terminating any citation, use the Continuation Form 7000-3a. For any citation where the operator implements a compliant hearing conservation program provide that information in the Continuation Form’s Section II – Justification for Action. Include details on enrolling the miner(s) in that compliant program.

# Sample Section 104(a) Citation – Noise AL Non-S&S

Mine Citation/Order

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



Section I--Violation Data

1. Date Mo Da Yr 4/28/2023	2. Time (24 Hr. Clock) 1500	3. Citation/ Order Number 7654372
4. Served To Nancy Doe, Mine Manager		5. Operator Academy Mining Company
6. Mine Blue Falcon Sand and Gravel Mine	7. Mine ID 76-54312 (Contractor)	
8. Condition or Practice		8a. Written Notice (103g) <input type="checkbox"/>

The results of an MSHA full shift noise sample taken (list the date) indicated that the #121 New Holland skid steer operator received an action level noise dose of 78.36%. This exceeds the action level dose of 50% plus the error factor (or 66%). The miner was not enrolled in a hearing conservation program that meets all the requirements of 30 CFR 62.150 as required by 30 CRF 120. Hearing protection was not being used by the skid steer operator at the time of the sampling. The abatement time is set to allow the mine operator time to enroll the miner in a formal hearing conservation program which meets all the requirements of 30 CFR 62.150.

See Continuation Form (MSHA Form 7000-3a)

9. Violation	A. Health <input type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 62.120
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Section II--Inspector's Evaluation

10. Gravity:			
A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input checked="" type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>			
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input checked="" type="checkbox"/> Fatal <input type="checkbox"/>			
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>			
12. Type of Action 104 (a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>	
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			E. Citation/ Order Number
14. F. Dated Mo Da Yr			
15. Area or Equipment			

16. Termination Due	A. Date Mo Da Yr 5/1/2023	B. Time (24 Hr. Clock) 1500
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Section III--Termination Action

17. Action to Terminate		
18. Terminated	A. Date Mo Da Yr	B. Time (24 Hr. Clock)

Section IV--Automated System Data

19. Type of Inspection (activity code) E01	20. Event Number 1234567	21. Primary or Mill P
22. AR Name Copper Pot		23. AR Number 12345

MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.

## Sample Section 104(a) Citation – Noise AL Non-S&S Termination

Mine Citation/Order Continuation					
<b>Section I—Subsequent Action/Continuation Data</b>					
1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/> <input type="checkbox"/>		2. Dated (Original Issue) Mo Da Yr 04/28/2023		3. Citation/Order Number 7654372 - 01	
4. Served To Nancy Doe, Mine Manager			5. Operator Academy Mining Company		
6. Mine Blue Falcon Sand and Gravel Mine			7. Mine ID (Contractor) 76-54312		
<b>Section II—Justification for Action</b>					
The operator of the #121 New Holland skid steer has been enrolled in a formal hearing conservation program meeting all provisions of 30 CFR 62.150. This citation is terminated.					
<b>Section III—Subsequent Action Taken</b>					
8. Extended To		A. Date Mo Da Yr		B. Time (24 Hr. Clock)	
				<input type="checkbox"/> C. Vacated <input checked="" type="checkbox"/> D. Terminated <input type="checkbox"/> E. Modified	
<b>Section IV—Inspection Data</b>					
9. Type of Inspection E01		10. Event Number 1234567			
11. AR Name Copper Pot		AR Number 12345	12. Date Mo Da Yr 05/02/2023		13. Time (24 Hr. Clock) 11:53
MSHA Form 7000-3a, Mar 85 (revised)					

## Section 104(a): Citation – Noise Permissible Exposure Limit (PEL)

### Form 7000-3 Guidance: Section 104(a) Citation – Noise PEL

**Item 1.** Enter the citation issuance date. In most cases, this is also the date the inspector received the sample results and determined that a violation occurred.

**Note:** The occurrence date in IAS is the sample date. If the inspector receives sample results on the same date, the issue date and occurrence date may be the same.

**Item 8.** Describe the area and/or miner sampled and the sampling method. Provide the details of the noise overexposure. If applicable, specify whether the miner wore appropriate hearing protection and was enrolled in a compliant Hearing Conservation Program.

**Item 10A.** “Unlikely” vs “Reasonably Likely” depends on whether the miner wore appropriate hearing protection.

**Item 10B.** Noise induced hearing loss is always “Permanently Disabling.”

**Note:** When terminating any citation, use the Continuation Form 7000-3a. For any citation where the operator installs engineering and/or administrative controls such as a compliant hearing conservation program to reduce exposure, list all controls in the Continuation Form’s Section II – Justification for Action.

### Noise PEL P Code Termination

MSHA uses a “P Code” to designate that an overexposure condition remains despite implementing all feasible engineering and administrative controls. It is an administrative device that allows MSHA to track these special overexposure situations.

**Note:** The District must initiate and conduct a P Code review before terminating a citation where the noise exposure continues to exceed the PEL.

#### CAUTION

Terminating a citation with a P Code requires MSHA Headquarters approval.
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When terminating any citation, use the Continuation Form 7000-3a. After MSHA Headquarters approval, document the completion of the P Code review and list the assigned P Code number. Outline the job duties and function of the affected miner(s) and list all controls the operator implemented to reduce the noise exposure.

# Sample Section 104(a) Citation – Noise PEL

Mine Citation/Order

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



Section I--Violation Data

1. Date Mo Da Yr 4/13/2023	2. Time (24 Hr. Clock) 1516	3. Citation/ Order Number 7654373
4. Served To Nancy Doe, Mine Manager		5. Operator Academy Mining Company
6. Mine Blue Falcon Sand and Gravel Mine	7. Mine ID 76-54312 (Contractor)	
8. Condition or Practice		8a. Written Notice (103g) <input type="checkbox"/>

The results of an MSHA full shift noise sample taken (list the date) indicated that the loader operator of the Caterpillar 966 front-end loader received a permissible exposure noise level dose of 227.3%. This exceeds the permissible exposure level of 100% plus the error factor (or 132%). The operator has not instituted all feasible engineering and administrative controls. The loader operator is enrolled in a hearing conservation program that meets all the requirements of 30 CFR 62.150 as required by 30 CFR 62.120. Hearing protection was worn by the loader operator during the sampling. This condition exposed the FEL operator to possible permanently disabling injuries. The abatement time is set to allow the operator time to install all feasible engineering and administrative controls. The mine operator must ensure continued use of hearing protection and enrollment in a hearing conservation program until the noise dose is reduced to or below the permissible exposure level.

See Continuation Form (MSHA Form 7000-3a)

9. Violation	A. Health Safety Other <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 62.130 (a)
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Section II--Inspector's Evaluation

10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input checked="" type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input checked="" type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			D. Number of Persons Affected: 001	
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104 (a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			E. Citation/ Order Number	
F. Dated Mo Da Yr				
15. Area or Equipment				

16. Termination Due	A. Date Mo Da Yr 4/27/2023	B. Time (24 Hr. Clock) 1516
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Section III--Termination Action

17. Action to Terminate		
18. Terminated	A. Date Mo Da Yr	B. Time (24 Hr. Clock)

Section IV--Automated System Data

19. Type of Inspection (activity code) E01	20. Event Number 1234567	21. Primary or Mill P
22. AR Name Copper Pot		23. AR Number 12345

MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.

## Sample Section 104(a) Citation – Noise PEL Termination

Mine Citation/Order Continuation					
Section I—Subsequent Action/Continuation Data					
1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/> <input type="checkbox"/>		2. Dated (Original Issue) Mo Da Yr 04/13/2023		3. Citation/Order Number 7654373 - 01	
4. Served To Nancy Doe, Mine Manager			5. Operator Academy Mining Company		
6. Mine Blue Falcon Sand and Gravel Mine			7. Mine ID (Contractor) 76-54312		
Section II—Justification for Action					
<p>The operator replaced the mufflers on the Caterpillar 966 FEL reducing the noise level. They also install new insulating sound material in the operator cab and removed the AM/FM radio reducing the noise level. Based on an MSHA full shift noise sample taken on 4/25/2023, the FEL operator received a permissible exposure level noise dose of 76%. This dose is less than the permissible exposure level of 100% plus the error factor (or 132%). The FEL operator identified above must remain enrolled in a hearing conservation program that complies with the provisions of 30 CFR 62.150 until the noise dose is reduced below the action level.</p>					
Section III—Subsequent Action Taken					
8. Extended To		A. Date Mo Da Yr		B. Time (24 Hr. Clock)	
				<input type="checkbox"/> C. Vacated <input checked="" type="checkbox"/> D. Terminated <input type="checkbox"/> E. Modified	
Section IV—Inspection Data					
9. Type of Inspection E01		10. Event Number 1234567			
11. AR Name Copper Pot		AR Number 12345	12. Date Mo Da Yr 04/26/2023		13. Time (24 Hr. Clock) 12:23
MSHA Form 7000-3a, Mar 85 (revised)					

## **CHAPTER 4 – GENERAL INFORMATION**

### **Citation/Order Books/IAS Citation Numbers – Inspector Accountability**

Inspectors are accountable for violation numbers issued through IAS. Upon receiving the violation numbers, the inspector must sign and date to acknowledge receipt by: opening the IAS home page, selecting Forms, selecting Citation Disposition, then following the Citation Disposition Wizard.

### **Issuing Citations and Orders**

It is not mandatory to give mine operators the citation or order form at the time the inspector observes the violation. However, the inspector will inform the operator or agent of violative conditions observed and provide information regarding exposure, negligence, severity, and the time permitted for abatement. The inspector shall issue citations and orders to the mine operator or its agent with reasonable promptness.

**Note:** The inspector might cite and deliver some citations or orders to the mine operator after the violation has occurred because of the time needed for analysis or other reasons. Examples of such delivery delay circumstances include, but are not limited to, certain Part 50 violations, certain health violations, violations cited because of accident investigations, and violations cited after reviewing accident forms.

### **Citations and Orders Involving Violations of Approved Plans or Granted Petitions for Modification**

When issuing citations and orders for violating approved plans such as ventilation, roof control, or emergency response plans; or for violating the terms of a granted petition for modification, the inspector should list the following items in the body of the Item 8 narrative: the plan or petition's approval date, the page number, and the item number being cited. When citing violations of the terms of a petition for modification, the inspector should include the document or docket number of the petition and the page or item violated, as applicable.

### **Inspection or Investigation Closeout Conference**

At the conclusion of any enforcement-related inspection or investigation, the inspector shall discuss the general findings and each violation issued with the mine operator and, if applicable, contractors and/or miners' representatives. During this conference, the inspector will inform and discuss with all parties whether MSHA plans to evaluate any citations or orders as possibly flagrant and/or recommend any for possible special assessment. MSHA applies special assessment review procedures as an enforcement tool to increase monetary penalties for specific types of violations. (See the sections on Special Assessment Review (SAR) Form (7000-32) and Designating a Violation as "Flagrant" for more information.)

MSHA informs all parties that they have 10 days from the date of issuance of the violation to submit additional information or request a safety and health conference with the District Manager or designee if any party disagrees with the inspector's actions during the inspection or investigation. Further, a request for a safety and health conference must be in writing and, as 30 C.F.R. § 100.6 requires, must include a brief statement of the reason(s) why each citation or order should be conferenced. It is within MSHA's sole discretion to grant requests for a conference.

### **Compliance Assistance Visit (CAV) Inspection Follow-Up for a MNM Mine (Program Policy Manual, Volume IV, Reference IV.G-3), or a Reopening Inspection of a Coal Mine (Section 303(x) of the Mine Act)**

#### **Background**

Section 502(b) of the Act directs the Secretary to, "...provide technical assistance to operators in meeting the requirements of this Act and in further improving the health and safety conditions and practices in coal or other mines." MSHA developed the CAV program in partial fulfillment of this requirement. Section 303(x) of the Act requires that, prior to reopening an abandoned or inactive mine, the operator shall notify MSHA so that an AR can inspect, "the entire mine ... before mining operations commence."

#### **MNM Mine Inspection Following a CAV**

If, during a regular inspection at a MNM mine where MSHA previously performed a CAV, an inspector sees an unabated violation noted on a previous CAV inspection, the inspector will issue a § 104(a) citation without referencing the CAV notice in the narrative or negligence evaluation section of the citation. However, inspectors should remember that a § 104(a) citation is not the only action possible for unabated CAV notices. The hazard or miners' exposure to the hazard may have increased since the CAV inspection. If an imminent danger situation now exists, the inspector should issue a § 107(a) withdrawal order without referencing the CAV notice in the body or negligence evaluation section of the order.

#### **Coal Mine Inspection Post-Reopening**

Once MSHA has conducted a reopening inspection and the coal mine reopens and begins operating, MSHA must perform regular inspections of that mine: a minimum of four inspections a year for underground coal mines and a minimum of two inspections a year for surface mines. MSHA's policy interprets this requirement as an average of one inspection every quarter for underground mines and one inspection every six months for surface operations.

If, during a regular inspection at a coal mine where MSHA previously performed a reopening inspection, an inspector sees an unabated violation, the inspector will issue a § 104(a) citation without referencing the previous or unabated violation in the narrative or negligence evaluation section of the citation. However, inspectors should remember

that a §104(a) citation is not the only action possible. The hazard or miners' exposure to the hazard may have increased. If an imminent danger situation now exists, the inspector should issue a § 107(a) withdrawal order without referencing the previous or unabated violation in the body or negligence evaluation section of the order.

## **Field Notes**

Inspectors' field notes are official records, whether handwritten or typed in the IAS Field Note application. The inspector must include any notes taken during an inspection, in whatever form, in the final report.

For specific guidance on citation and order documentation, refer to the "General Inspection Procedures Handbook," available on the MSHA's Handbook Series webpage.

## **Contractor Citations and MSHA ID Numbers**

Unless a contractor receives a citation, has a reportable accident, or is engaged in one of the nine types of construction or services listed in Volume III of the MSHA Program Policy Manual, an MSHA contractor ID number is not necessary. However, some mine operators require contractors to get numbers as a precondition for contract bidding.

MSHA will provide an ID number for any contractor that requests one, but a contractor does not need to apply except for the reasons listed in the Program Policy Manual. Contractors should be aware that MSHA will assign only one ID number; the contractor will use that ID for any and all job sites.

MSHA can use the mine operator's mine ID number to cite a contractor that does not have an MSHA ID number. However, an inspector cannot add contractor citations into IAS until the contractor ID is obtained and linked to the mine ID number. Also, once the contractor receives an ID number, MSHA can modify the issued citation or order to include the new contractor number and change the company name to that of the contractor.

**Note:** The contractor's name entered on the citation must be exactly as it was when the MSHA Contractor ID number was assigned.

## **Issuing Citations or Orders – Accident Investigations**

The inspector will initiate a separate accident event code (E06, E07, and E08) for violations related to an accident. However, the inspector should cite violations not related to the accident under a different event code.

## **Termination (Abatement) Times for Citations**

When establishing citation abatement times, inspectors shall give primary consideration

to the health and safety of miners; setting abatement based on the mine operator's or inspector's convenience is forbidden. The termination time for a citation must be specific and provide a reasonable time for mine operators to abate the cited conditions, practices, or circumstances.

Contesting a citation or order with the Federal Mine Safety and Health Review Commission, or filing a petition for modification, does not relieve the operator or contractor of the responsibility for terminating or abating the violation by the specified due date.

### **Extending or Terminating Citations at an MSHA Office**

While most citations and orders require an on-site inspection to verify appropriate abatement before MSHA issues a termination, the Agency may terminate some citations and orders, such as those relating to certain records that may be sent to MSHA, without conducting an on-site inspection. However, a Field Office Supervisor should review and approve any citations or orders that are terminated by inspectors without conducting an on-site inspection.

When an MSHA Field Office extends, terminates, or vacates a citation or order, do not initiate a "new" event number; use the appropriate enforcement activity code (See Appendix A – Enforcement Activity Codes) from the last on-site inspection.

### **Extending Citations - Operator Contest**

Contesting a citation or order with the Federal Mine Safety and Health Review Commission, or filing a petition for modification, does not exempt the mine operator or contractor from complying with the cited mandatory standard by the specified due date. Unless directed otherwise, neither contesting the citation or order nor filing a modification petition is a basis for an inspector to extend any citation deadline.

### **Modifying or Correcting Citations/Orders/Subsequent Actions**

The original Mine Citation/Order Form 7000-3, Mine Citation/Order Continuation Form 7000-3a, and all copies must be identical. The inspector must use a Mine Citation/Order Continuation Form 7000-3a to modify or correct any items written or entered in error on the original form. Inspectors must not make changes on MSHA copies nor ask mine operators to make the same changes on their copies.

### **Terminating Citations and Orders**

An inspector can use either the Mine Citation/Order Form 7000-3 or a Mine Citation/Order Continuation Form 7000-3a to terminate citations and orders and provide a copy(ies) to the mine operator or contractor.

**Example:** An inspector issued four citations or orders to a mine operator on

Monday. The operator corrected all violative conditions by Thursday of the same week. The inspector shall terminate each of the four citations or orders individually on a Mine Citation/Order Continuation Form 7000-3a.

### **Terminating Citations and Orders – Specific Situations**

MSHA shall terminate existing citations and orders when:

- MSHA classifies a mine as permanently abandoned and sealed;
- The operation or equipment, such as a portable crusher, moves to a location some distance from the original site; or
- The operator permanently removes from service or retires out of compliance equipment, or permanently removes the equipment from the mine site.

### **Mine Reclassified as Permanently Abandoned and Sealed**

The inspector shall make every reasonable attempt to determine if the operator complied with the cited standards. If the operator complied, terminate any outstanding citations or orders and hand deliver or mail the operator the terminations. Include a statement on the Mine Citation/Order Continuation Form 7000-3a termination(s) that the operator corrected the violative condition(s) or practice(s).

If the operator failed to comply before MSHA reclassified the mine as abandoned, then terminate any outstanding citations or orders and hand deliver or mail the operator the terminations. Include the following language on each Mine Citation/Order Continuation Form 7000-3a: "The basis for termination of this citation (or order) is the classification of the mine as permanently abandoned. The violative condition(s) or practice(s) was not corrected. The operator must comply with the provisions of the cited standard before resuming activities at this location or at another mine."

### **Operation or Equipment Moves Away from the Initial Mine Site**

The inspector must make every reasonable attempt to determine if the operator complied with the cited standards.

- If the operator complied before moving, terminate all outstanding citations or orders and hand deliver or mail the operator the terminations. Include a statement on the termination(s) that the operator corrected the violative condition(s) or practice(s).
- If the operator failed to comply before moving, terminate all outstanding citations or orders and hand deliver or mail the operator all terminations. Include the following language on each Mine Citation/Order Continuation Form 7000-3a: "The basis for termination of this citation (or order) is the moving of mining operations (or equipment). The violative condition(s) or practice(s) was not corrected prior to moving. The operator must comply with the provisions of the

standard before resuming any activities at another mine. Failure to correct the cited condition(s) or practice(s) prior to resuming these activities will be considered more than ordinary negligence."

### **Equipment Removed from Service**

"Removed from service" means the mine operator or contractor took action(s) to make equipment (e.g., front-end loader, truck) or mining units (e.g., portable crusher, screening unit) inoperable and thereby, eliminate a violation. "Removed from service" does not mean simply putting the equipment or unit to the side; the operator must render the equipment or unit so inoperable that, without corrections or repairs, it cannot restart and/or return to service.

The inspector should note on the Mine Citation/Order Continuation Form 7000-3a, the actions taken to render the equipment or unit unserviceable. The inspector should refer to any evidence supporting removing the equipment or unit from service such as the mine operator's or agent's documentation and relevant statements.

### **Mine Ownership Changes with Outstanding Citations or Orders**

When terminating a citation or order after ownership of a mine changes, issue the termination to the current operator at the time of termination. However, MSHA will assess any civil penalty to the mine operator that received the initial citation or order even though the mine no longer belongs to that operator.

**Note:** Do not modify the outstanding citation(s) to reflect a change in mine ownership.

When an ownership change occurs after MSHA issues a citation, but before termination of that violation, and there is no justification to extend the abatement period, the inspector can issue a § 104(b) order of withdrawal to the new mine operator.

**Example:** On July 1, MSHA cites "Jane Doe Sand and Gravel" for an unguarded conveyor head pulley and allows one week to abate the condition. On July 7, "Tom Brown Crushing" purchases the mine and begins managing the operation. On July 10, an inspector returns to check on the outstanding guarding citation and finds that the head pulley still lacks a guard. Based on the presence or absence of mitigating circumstances, the inspector would:

- **Mitigating Circumstances Present:** Issue an extension to "Tom Brown Crushing" if the inspector finds and documents mitigating circumstances such as the new mine operator was unaware of the violation. Note in Form 7000-3a's Section II – Justification for Action that "Tom Brown Crushing" purchased the operation on July 7 and is the new mine operator.

Or

- **Mitigating Circumstances Absent:** Issue a § 104(b) order of withdrawal to "Tom Brown Crushing" would be issued if the inspector found and documented that there were no mitigating circumstances to issue an extension (e.g., the new mine operator was aware of the violation but chose not to abate the cited condition). The § 104(b) order would be issued to "Tom Brown Crushing" noting in the Item 8 narrative that Tom Brown Crushing purchased the operation on July 7 and was the new mine operator.

## **Vacating Citations or Orders**

Vacated citations and orders are part of the inspection record; include them with the inspection or investigation reports. If the inspector is still at the mine, do not reclaim the previous copies and mark the citation or order "Void." Instead, leave these copies with the mine operator and issue a "Vacate" action on Form 7000-3a, stating on that form the specific reason for vacating the citation or order. Forward copies of all vacated citations and orders to the District Office separate from the inspection report. The appropriate District Manager must authorize vacating an imminent danger order prior to that action occurring.

## **Standard Subsections – Citations or Orders**

When citing a violation, specify both the standard and the appropriate subsection.

## **Petitions for Modification (30 C.F.R. Part 44)**

According to 30 C.F.R. § 44.4(c), "... Orders granting petitions for modification may contain special terms and conditions to assure adequate protection to miners. The modification, together with any conditions, shall have the same effect as a mandatory standard."

If an inspector finds that the operator has violated one or more of the conditions specified in a granted petition for modification, the inspector shall:

- Cite the safety standard for the granted petition for modification;
- Include the docket number of the granted petition for modification in the Item 8 narrative of the Mine Citation/Order Form;
- Note the specific condition violated in the Item 8 narrative of the Mine/Citation Order Form; and
- Notify supervisor after citing this violation.

Depending on the circumstances present at the time of issuance, this citation may be the basis for initiating action to revoke the granted petition. However, the District must send any request to revoke a petition to MSHA Headquarters; revoking a petition is not

a District-level decision.

### **Possible Knowing/Willful Violation Review Form (7000-20)**

Inspectors must complete a Possible Knowing/Willful (PKW) Violation Review Form (MSHA Form 7000-20) for:

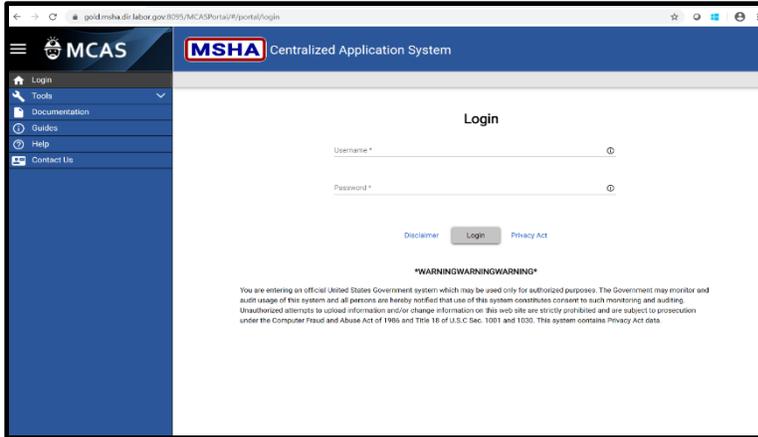
- § 107(a) orders with § 104(a) and § 104(d) citations;
- § 107(a) orders with § 104(d) orders;
- “S&S” § 104(d) citations and orders with an evaluation of at least “high” for negligence;
- § 104(e) orders of withdrawal with an evaluation of at least “high” for negligence;
- “S&S” § 104(g) orders of withdrawal with an evaluation of at least “high” for negligence;
- flagrant violations; and
- citations issued for working in violation of an order.

MSHA shall only review for possible further action a violation of a mandatory health and safety standard or order issued under the Mine Act: violations of 30 C.F.R. Parts 46, 47, 48, 49, 56, 57, 58, 62, 70, 71, 72, 75, 77, and 90 and 30 C.F.R. § 50.10.

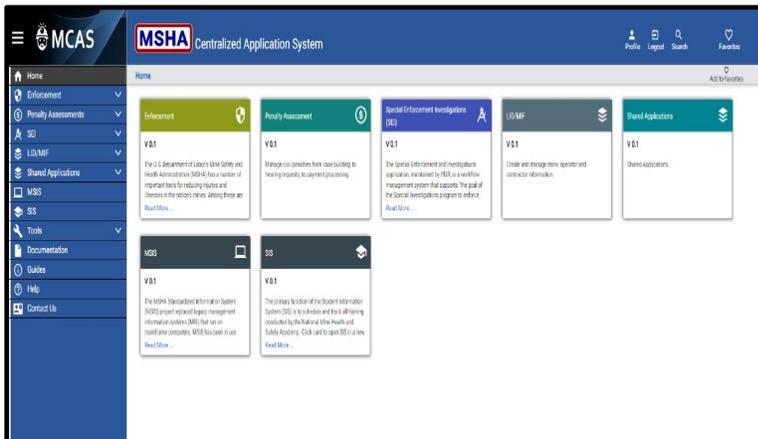
Submit the PKW Violation Review Form (7000-20) electronically through IAS first using the following sequence:

1. Open the IAS home page.
2. Ensure the event number is correct and select the right event number.
3. Click the dark green FORMS tile.
4. Select the Possible Knowing/Willful Violation Review tab.
5. Follow the drop-down windows; select the correct citation/order number.
6. Proceed through the form answering the questions.

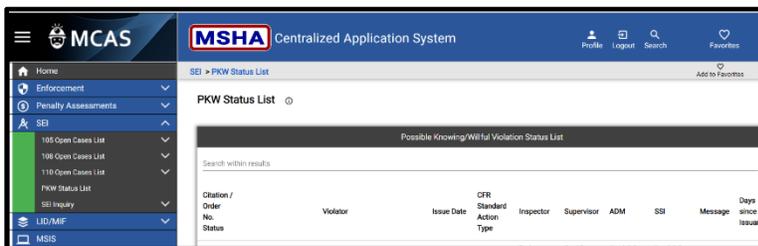
After finishing the PKW Violation Review Form in IAS, open the MSHA Centralized Application System (MCAS) and login using the Username and Password for your computer:



After logging into MCAS, there are several drop-down menus available on the left-hand side of the screen.



Click on “SEI” (Special Enforcement Investigation), then select “PKW Status List.”



On this screen, click on the “Citation/Order No. Status,” which should display the citation/order in blue. Follow the instructions, answer the questions, and upload the required documentation in the drop-down windows. When finished, click the blue button to submit it to your supervisor.

## **Special Assessment Review (SAR) Form (7000-32)**

Special assessment is the process for determining an appropriate civil penalty without using the penalty tables in 30 C.F.R. § 100.3. To determine the need for a SAR, use the following guidelines:

### **Mandatory Special Assessment**

- Violations for which the daily penalty has been invoked under § 110(b) of the Mine Act;
- Violations cited to miners for smoking or carrying smoking materials under § 110(g) of the Mine Act;
- Flagrant violations as defined in § 110(b)(2) of the Mine Act;
- Violations involving discrimination under § 105(c) of the Mine Act; and
- Violations involving personal liability under § 110(c) of the Mine Act.

**Note:** District Managers may recommend other violations for special assessment.

### **Potential Special Assessment**

MSHA must review the following types of violations for special assessment. For these violations, a special assessment is not mandatory since mitigating circumstances may exist; if MSHA finds mitigating circumstances then the violation would not warrant a special assessment.

- Section 104(a) citations issued for violations of §§ 103(a), 103(f), 103(j), 103(k), 104(b), 104(d), 104(e), 104(g)(1), 107(a), and 110(j) of the Mine Act.
- Violations that contributed to a fatal or serious injury.
- Potentially flagrant violations.

Enforcement personnel should reference the following table to help determine whether a violation requires either a review or mandatory application of a special assessment. Completing a SAR Form (7000-32) is mandatory for each violation that is reviewed for special assessment. For more information, see Program Policy Manual Volume III, “100.5 Determination of Penalty; Special Assessment.” Submit the SAR Form (7000-32) electronically in IAS using the following instructions:

1. Open the IAS home page.
2. Ensure the event number is correct and select the right event number.
3. Click the dark green FORMS tile.
4. Select the Special Assessment Review tile.
5. Follow the Special Assessment Review Wizard’s directions.

**Table: Violations Requiring Submission of an MSHA SAR Form (7000-32)**

Violation Category	Level of Negligence				
	None	Low	Moderate	High	Reckless Disregard
Fatality or Serious Injury	Yes	Yes	Yes	Yes	Yes
§ 104(a) Citations issued for violations of Mine Act §§ 103(a), 103(f), 103(j), 103(k), 104(d), 104(b), 104(e), 104(g)(1), 107(a), and 110(j)	Yes	Yes	Yes	Yes	Yes
Flagrant Violation	N/A	N/A	N/A	Yes	Yes
§ 110(b) Daily Penalty for failure to abate	Yes	Yes	Yes	Yes	Yes
§ 110(g) Smoking or smoking material violations cited to miners	Yes	Yes	Yes	Yes	Yes
Any other violation involving circumstances warranting special assessment	Yes	Yes	Yes	Yes	Yes

### Designating a Violation as “Flagrant”

According to both § 110(b)(2) of the Mine Act and the MINER Act of 2006, a “flagrant” violation is, “a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury.” Violations that are deemed as “flagrant” may be assessed a civil monetary penalty.

The designation of a violation as “flagrant” is an MSHA assessment enforcement tool, and only applies to elevated enforcement actions meeting certain criteria. However, before considering whether a violation could be “flagrant,” an inspector must first determine the proper level of enforcement action. The policies and procedures for deciding the appropriate enforcement action, such as issuing § 104(d)(1) citations, § 104(d)(1) orders, and § 104(d)(2) orders are the same for all violations without regard to a ‘flagrant’ designation.

The District Office must evaluate for possible classification as “flagrant” any violation that meets **either** the reckless failure **or** the repeated failure screening criteria below.

### Reckless Failure

Flagrant violations that arise from a mine operator’s reckless failure must:

- Be significant and substantial (Form 7000-3, Item 10C);
- Be at least “Permanently Disabling” (Form 7000-3, Item 10B);
- Be an “unwarrantable failure”; and

- Have a negligence level of “Reckless Disregard” (Form 7000-3, Item 11E).

**Example:** An inspector issued a § 104(d)(1) “S&S” citation for the mine operator’s failure to install a guard on the tail pulley of a conveyor belt with miners working in the area. The inspector evaluated the probable injury or illness as “Permanently Disabling” and negligence as “Reckless Disregard” because the mine operator had been informed of the condition for several work shifts prior to receiving the citation and had instructed miners to continue operating the belt without providing a suitable guard. The inspector must complete a SAR Form (7000-32) and submit it to the District to evaluate the violation as both “flagrant” and an “unwarrantable failure.”

## Repeated Failure

Flagrant violations that arise from a mine operator’s **repeated failure** must:

- Be significant and substantial (Form 7000-3, Item 10C);
- Be at least “Permanently Disabling” (Form 7000-3, Item 10B);
- Be an “unwarrantable failure”; and
- Consist of two prior "unwarrantable failure" S&S violations of the same safety or health standard cited within the past 15 months.

**Note:** The 15-month time period includes violations cited previously on the same day or during the same inspection as the flagrant violation.

To qualify as a repeated failure evaluation, previous citations or orders must be violations of the same safety or health standard that cite the same subsections, and have been either § 104(d)(1) or § 104(d)(2) enforcement actions. For example, citing §§ 56/57.14201(a) and 56/57.14201(b) would not meet the criteria for consideration as a flagrant repeated failure. However, even if there are differences in the condition or practice cited, the inspector should still submit for evaluation prior violations that cite the same subsection as the potential repeated flagrant violation. For instance, an order cites a violation of § 75.220(a)(1) because the entries were driven at widths exceeding the roof control plan minimum distance. There are two previous violations of § 75.220(a)(1) related to roof bolts not being inserted at distances specified in the roof control plan. Since all three instances involve violations of § 75.220(a)(1), the inspector should complete a SAR Form (7000-32) and submit the violation to the District for consideration as flagrant.

The following is an example of a violation required to be evaluated in the District as a possible repeated failure flagrant violation in conjunction with the unwarrantable failure violation.

**Example:** An inspector issued a § 104(d)(2) “S&S” order of withdrawal for a mine operator’s failure to install a guard on the tail pulley of a conveyor belt with miners working in the area. The inspector evaluated the injury or illness as “permanently disabling,” and the negligence as “high” because the operator had: (a) been informed

of the condition several work shifts prior to being cited; (b) instructed miners to continue operating the belt without providing a suitable guard; and (c) cautioned miners verbally to be careful in the area. The inspector determined that the operator had received three unwarrantable, S&S violations of the same subsection of the guarding standard, § 56.14107(a), within the past 15 months. The inspector must complete a SAR Form (7000-32) and submit it to the District to review the violations as both “flagrant” and an “unwarrantable failure.”

### **“Flagrant” Violation Submission Procedures**

Complete the relevant portions of a SAR Form (7000-32), select the “flagrant violation” box in section 10 of the Form, and initiate the District review procedure for every violation that meets the “reckless” and/or “repeated” flagrant screening criteria. The packet sent to the District Office must include:

- A completed PKW Violation Review Form;
- A copy of the Legal Identity Report;
- A copy of the relevant general field notes;
- A copy of the citation(s) or order(s), including associated violation notes;
- Diagrams and photographs, if available;
- Applicable portions of mine plans or records, if relevant;
- Accident investigation reports, data sheets, witness statements, prior associated citation(s) or order(s), and/or memoranda or other evidence, if relevant; and
- A copy of any modifications.

The inspector shall submit this packet to the Field Office Supervisor for review and evaluation before the Field Office sends the packet to the District Office in a timely manner or as directed by the District Manager.

If a violation meets the broader statutory definition of a “flagrant” violation, a District Manager can recommend for evaluation as “flagrant” pursuant to existing guidance even if it does not meet the reckless or repeated failure flagrant violation screening criteria. Prior to a proposed flagrant assessment issuance, RSOL or SOL-MSH must be notified for review of the evaluation. For a more effective and efficient review, a District Manager should informally notify SOL of the violation(s) referred for evaluation.

## Appendix A – Enforcement Activity Codes

MSIS Code	Activity	Description
E01	Regular Safety and Health Inspection	Mandatory safety and health inspection of an entire mine, surface facility, or other entity having a mine ID number.
E02	Section 103(i) Spot Inspection	Mandatory spot inspection of a mine that qualifies under § 103(i) of the Act and is inspected for gases liberation, serious ignition or explosions hazards, or other especially hazardous conditions or problems.
E03	Section 103(g) Written Notification Hazard Complaint Inspection	Special inspection that responds to a written notice filed pursuant to § 103(g) of the Act alleging a violation or imminent danger exists at a mine.
E04	Verbal Hazard Complaint Inspection	Special inspection due to a complaint (verbal or written) alleging a violation or hazardous condition that is not a § 103(g) request or a code-a-phone complaint.
E05	Section 108 Injunctive Action or Other Special Investigation Activity	Any investigative activity conducted pursuant to § 108 of the Act regarding an injunction or any other Special Investigation activity.
E06	Fatal Accident Investigation	Investigation of an individual's death at a mine.
E07	Non-Fatal Accident Investigation	Investigation of a serious non-fatal injury accident at a mine.
E08	Non-Injury Accident Investigation	Investigation of a non-injury accident as defined in 30 C.F.R. § 50.2.
E09	Mine Emergency Operations	All rescue and recovery operations during a mine emergency. Includes time monitoring the mine environment during mine fires determined to be mine emergencies. <b>Note:</b> No citations or orders should be issued against this type of activity.
E10	Petition for Modification Investigation	Any investigative activity conducted pursuant to §§ 101(c) and 101(d) of the Act.
E11	Section 105(c) Investigation (Discrimination)	Any investigative activity conducted pursuant to § 105(c) of the Act due to a complaint alleging discrimination.
E12	Sections 110(c), 110(d) Investigation (Willful or Knowing Violations)	Any investigative activity conducted pursuant to § 110 of the Act regarding citations and orders where there is possible knowing and willful intent.

<b>MSIS Code</b>	<b>Activity</b>	<b>Description</b>
E13 (Coal Only)	Re-opening Inspection	A non-penalty inspection of an entire mine after having been abandoned or declared inactive. <b>Note:</b> This code is restricted to Coal mines.
E14 (MNM Only)	Compliance Assistance Visit	A visit to a new mine, a visit prior to re-opening a mine, a visit to inspect new facilities at an operating mine, or the installation of new equipment at an operating mine to point out potential violations without monetary civil penalties being proposed. <b>Note:</b> This code is restricted to MNM mines.
E15	Compliance Follow-up Inspection	An inspection conducted to determine the abatement status of previously cited violations.
E16	Spot Inspection	An inspection of a mine or part(s) of a mine to determine whether there is compliance with safety and health standards.
E17	Special Emphasis Programs	Activity for a specialized purpose that may be unique for the Agency, coal mines, or MNM mines, such as the “Focus on Safe Work” outreach. Each activity may be assigned a unique identifier.
E18	Shaft, Slope, or Major Construction Spot Inspection	An inspection of a shaft, slope, or major construction site to determine whether an imminent danger exists and compliance with safety and health standards, or any issued violations.
E19	Electrical Technical Investigation	An investigation of all or part of a mine’s electrical components and systems. Includes field changes on electrical face equipment, trolley surveys, circuit breaker studies, ground monitor checks, and other special electrical inspections or investigations.
E20	Roof Control Technical Investigation	An investigation of a mine’s roof conditions that may include engineering and in-depth studies of roof problems or potential problems, roof control surveys, and pull tests.
E21	Ventilation Technical Investigation	An investigation of a mine’s ventilation system that may include detailed engineering studies of current or potential problems, surveys, and waiver requests.
E22	Health Technical Investigation	An investigation of a reported or potential problem with any toxic substance or harmful physical agent. Includes an investigation of an operator’s sampling program where samples may or may not be collected, Part 90 miners and their occupations (coal only), and a free silica technical investigation dictating additional respirable dust samples for further analysis.

MSIS Code	Activity	Description
E23	Impoundment Spot Inspection	An inspection of an impoundment to determine whether an imminent danger exists and compliance with approved plans and safety and health standards.
E24	Other Technical Compliance Investigation	Technical investigation not described by any other code.
E25	Part 50 Audit	Part 50 Audit of a mine's accident, injury, illness, and employment records. Includes all activity in pursuit of the audit.
E26	Other Contacts	Includes industry assistance, technical assistance visits for plan evaluations, and other contacts not classified by the other codes. <b>Note:</b> Although this is a mine visit, this is <b>not</b> a mine inspection or investigation.
E27	Attempted Inspection (Denial of Entry)	A mine visit specifically for conducting an enforcement activity, but that did not occur due to direct or indirect denial of entry.
E28	Mine Idle Activity	A mine visit specifically for conducting an enforcement activity, but that did not occur because the mine was not operating.
E29	Program in Accident Reduction/Compliance Analysis Program	A program aimed at injury reduction in selected mines with high accident and injury levels. Includes accident reduction surveys conducted by teams. In Coal, includes all time working in a non-AR capacity.
E30	Accident Reduction Program	All field activities related to accident reduction and prevention programs, and formal walk and talk activities that are not part of any other event.
E31	Training Plan Approval and Revisions (Field)	All field activities regarding the initial approval or revision of training plans.
E32	On-site Training Program Evaluation (Field)	All field activities related to evaluating MSHA-approved instructors, training plans, course content, task outline, Forms 5000-23, records of certified and qualified persons, learning environment, etc., not conducted as part of another event.
E33	Non-Chargeable Accident Investigation	Investigation of any death, serious non-fatal injury, or non-injury accident at a mine that is not charged to the mine, contractor, or the mining industry. <b>Note:</b> If the accident is subsequently deemed chargeable, the activity may be changed to another event type. Citations or orders can be issued during an E33 event.

<b>MSIS Code</b>	<b>Activity</b>	<b>Description</b>
T01	Investigative Case Review	Time spent in an MSHA office reviewing reports of investigations.
T02 (Coal only)	Office-Generated Violation Activity	All time associated with office-generated violations not coded under another code.
T03	Legal Hearing/Document	Time involved in legal hearings, MSHA hearings, or testifying in court. Includes the prep time for these activities unless covered by another activity code. Does not include time spent by the Conference/Litigation Representative (CLR).
T04	Safety and Health Conference	All time spent on operator or miners' representative-requested conferences related to cited violations of the Act or regulations and the subsequent assessment of civil penalties. <b>Note:</b> These are not inspectors' closeout conferences.
T05	Contested Case Activities	All CLR activities (office, mine site, hearings, etc.) relating to Alternative Case Resolution Initiative case resolutions.
T06	Plan Approvals and Reviews	Time spent in an MSHA office reviewing and approving plans.
T07	Technical Assistance to Industry/Union Personnel or Interested Parties	All time associated with providing technical assistance to company or union personnel or other interested parties. Includes groups requiring MSHA's technical expertise but that are not specifically under MSHA jurisdiction.
T08	Instructor Approval	All activities, other than training instructors, required to produce approved instructors.
T09	Evaluating Cooperative Instructors	All time evaluating cooperative instructors in the office or field.
T10	Qualification and Certification	All activities related to qualifying and certifying people. Includes noise, dust, methane, oxygen deficiency, impoundments, electrical, mine rescue, first aid instructors, etc.
T11	Holmes Safety Association (Assistance to Chapters/Councils)	All activities of Holmes Safety Association (HSA) chapters. Includes all time spent in forming and operating HSA chapters or councils, preparing for and delivering presentations at meetings, and time involving Joseph A. Holmes Awards.
T12	State Grants Assistance and State Plans	Includes time spent attending State Grants meetings, as well as meetings with state and headquarters personnel regarding State Grant assistance and plans.

<b>MSIS Code</b>	<b>Activity</b>	<b>Description</b>
<b>T13</b>	Other Education and Training Field Activities	Includes work on non-mine-specific accident reduction and prevention programs, as well as other activities aiding the mining community that are not coded as an education and training event or not covered by another activity code. <b>Note:</b> These activities are at locations other than the MSHA office.
<b>T14</b>	Informational Meetings, Seminars, and Training Classes Given to Industry	All activities relating to training, demonstrations, meetings, seminars, conferences, association meetings, and informational meetings for industry (off-site meetings, excluding Holmes Safety).
<b>T15</b>	Instructing Mine Rescue and First Aid (non-MSHA)	All activities relating to mine rescue and first aid training, including team training, judges training, etc. Does not include mine rescue and first aid instructor training.
<b>T16</b>	Supervisory Duties (Office)	All supervisory-related duties in an MSHA office.
<b>T17</b>	National Committee Meetings and Assignments	Includes time spent attending national-level committee meetings and performing assignments from Headquarters, such as developing or revising standards and /or regulations.
<b>T18</b>	Review of Documents/Laboratory Duties/Vehicle Maintenance	Time spent reviewing documents such as regulations, policy, accident investigations, conducting laboratory duties (not associated with an event), and performing vehicle maintenance.
<b>T19</b>	Official Union Duties	Personnel participating in official union duties.
<b>T20</b>	Staff Meetings	Personnel participating in staff or safety meetings in or outside of MSHA offices.
<b>T21</b>	Instructing MSHA Personnel in Training Classes	Time MSHA personnel spent instructing classes, attending information meetings, seminars, etc.
<b>T22</b>	Informational Meetings, Seminars, and Training Classes Received	MSHA personnel receiving training other than mine rescue and first aid from both MSHA and outside sources.
<b>T23</b>	Mine Rescue/ Mine Emergency Response Development (MERD) Activities	Includes time spent training and preparing for or participating in the national or regional contests. Also, includes time spent preparing for or participating in MERD exercises.
<b>T24</b>	Freedom of Information Act (FOIA) Request/ Congressional Inquiries	Includes all time spent researching and responding to the request.

<b>MSIS Code</b>	<b>Activity</b>	<b>Description</b>
<b>T25</b>	Medical Accommodation: On-the-Job Injury	Includes all time charged by those injured or incapacitated on the job and who are now performing meaningful work for MSHA in a capacity that meets their physician's prescribed limitations or restrictions. <b>Note:</b> These assignments must be of limited duration.
<b>T26</b>	Medical Accommodation: Personal Injury	Includes all time charged by those injured or incapacitated outside of Government time and who are now performing meaningful work for MSHA in a capacity that meets their physician's prescribed limitations or restrictions. <b>Note:</b> These assignments must be of limited duration.
<b>T27</b>	Special and Miscellaneous Assignments	Temporary duties outside of regularly assigned job-related duties and any other activity not covered by other codes.
<b>T28</b>	Annual Leave	Self-explanatory.
<b>T29</b>	Administrative Leave	Self-explanatory.
<b>T30</b>	Compensatory Leave	Self-explanatory.
<b>T31</b>	Holiday	Self-explanatory.
<b>T32</b>	LWOP	Leave Without Pay.
<b>T33</b>	AWOL	Absent Without Leave.
<b>T34</b>	Military Leave	Self-explanatory.
<b>T35</b>	Sick Leave	Self-explanatory.
<b>T36</b>	OWCP	Workers' Compensation.
<b>T37</b>	Jury Duty	Self-explanatory.
<b>T38</b>	Furlough (non-pay status)	Self-explanatory.
<b>T39</b>	Suspension Without Pay	Self-explanatory.

## **Appendix B – List of Acronyms and Abbreviations**

AL: Action Level

ANSI: American National Standards Institute

AR: Authorized Representative

CAV: Compliance Assistance Visit

C.F.R.: Code of Federal Regulations

CLR: Conference/Litigation Representative

CO: Carbon Monoxide

DO: Designated Occupation

DPM: Diesel Particulate Matter

DWP: Designated Work Position

HCl: Hydrogen Chloride

HSA: Holmes Safety Association

IAS: Inspection Application System

ID: Identification

IDLH: Immediate Danger to Life or Health

MCAS: MSHA Centralized Application System

MERD: Mine Emergency Response Development

Mine Act (or the Act): Federal Mine Safety and Health Act of 1977

Mine Operator: Operator

MINER Act: Mine Improvement and New Emergency Response Act of 2006

MMU: Mechanized Mining Unit

MNM: Metal and Nonmetal

MSHA: Mine Safety and Health Administration

MSIS: MSHA Standardized Information System

NDO: Non-designated Occupation

NIOSH: National Institute for Occupational Safety and Health

Non-S&S: Non-Significant and Substantial

Order: Order of Withdrawal

PEL: Permissible Exposure Limit

PH: Procedure Handbook

PKW: Possible Knowing/Willful

POV: Pattern of Violations

PPE: Personal Protective Equipment

RSOL: Regional Solicitor's Office

S&S: Significant and Substantial

SAR: Special Assessment Review

Secretary of Labor: Secretary

SHEIN: Standard, Hazard, Exposure, Injury, and Negligence

SOL: Office of the Solicitor

SOL-MSH: Office of the Solicitor's Division of Mine Safety and Health

TLV: Threshold Limit Value

U.S.C.: United States Code