

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 48

RIN 1219-AB35

Training Standards for Shaft and Slope Construction Workers at Mines

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Proposed rule; notice of public hearings and close of record.

**SUMMARY:** We propose to revise certain provisions of our regulations addressing Training and Retraining of Miners, 30 CFR part 48. The proposed rule would remove the part 48 training exclusion for shaft and slope construction workers. Under this proposed rule, shaft and slope construction workers at surface and underground coal and metal and nonmetal mines would be treated like extraction and production miners and subject to the part 48 training requirements. The fatal accident history shows that requiring part 48 training would be beneficial for shaft and slope construction workers in order to help prevent mining accidents.

**DATES:** Comments on this proposed rule and on the information collection

requirements must be received on or before September 14, 2004.

The public hearing dates and locations are listed in the Public Hearings section under **SUPPLEMENTARY INFORMATION**. Individuals or organizations wishing to make oral presentations for the record should submit a request at least 5 days prior to the hearing dates.

**ADDRESSES:** You may submit comments, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: [Comments@MSHA.gov](mailto:Comments@MSHA.gov). Include RIN 1219-AB35 in the subject line of the message.
- Fax: (202) 693-9441.
- Mail/Hand Delivery/Courier: MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22201-3939.

Instructions: All submissions must reference MSHA and RIN 1219-AB35, (the Regulatory Information Number for this rulemaking).

Docket: To access comments received, go to <http://www.msha.gov> or MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia. All comments received will be posted to <http://www.msha.gov>.

*Information Collection Requirements:*

Comments concerning information collection requirements must be clearly identified as such and sent to both MSHA and the Office of Management and Budget (OMB) as follows:

- (1) Send information collection comments to MSHA at the address above.
- (2) Send comments to OMB by regular mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for MSHA.

**FOR FURTHER INFORMATION CONTACT:** Marvin W. Nichols, Jr., Director, Office of Standards, Regulations and Variances, MSHA; 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939; telephone (202) 693-9440; facsimile (202) 693-9441; or e-mail: [nichols.marvin@DOL.gov](mailto:nichols.marvin@DOL.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Public Hearings**

The public hearings will begin at 9 a.m. and will end after the last scheduled speaker testifies. The hearings will be held on the following dates at the locations indicated:

Date	Location	Telephone
August 24, 2004 .....	Little America Hotel, 500 S Main Street, Salt Lake City, UT 84101 .....	(801) 363-6781
August 26, 2004 .....	U.S. Department of Labor, Mine Safety and Health Administration, 1100 Wilson Boulevard, MSHA Conference Room, 25th Floor, Arlington, VA 22209.	(202) 693-9440

The hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. You do not have to make a written request to speak. Speakers will speak in the order that they sign in. Any unallotted time will be made available for person making same-day requests. At the discretion of the presiding official, the time allocated to speakers for their presentation may be limited. Speakers and attendees may also present information to the MSHA panel for inclusion in the rulemaking record.

The hearings will be conducted in an informal manner. The hearing panel may ask questions of speakers. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions.

A verbatim transcript of the proceedings will be included in the rulemaking record. Copies of this transcript will be available to the public, and can be viewed at <http://www.msha.gov>.

We will accept post-hearing written comments and other appropriate data for the record from any interested party, including those not presenting oral statements, prior to the close of the comment period on September 14, 2004.

**II. Background**

Section 115 (a) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 825, directed the Secretary of Labor to promulgate regulations concerning health and safety training programs for miners. Section 115(d) states that the Secretary of Labor “shall promulgate appropriate standards for safety and health training for coal or other mine construction workers.” On October 13, 1978, we published regulations for the training of miners in

30 CFR part 48 (43 FR 47453). The regulations prescribe the training that miners, including short-term specialized contract miners, must receive before working in surface or underground mines. In existing § 48.2(a)(1)(i), underground shaft and slope workers and workers engaged in construction activities ancillary to shaft and slope sinking are exempted from the training regulations. In existing § 48.22(a)(1)(i), surface shaft and slope workers are exempted from the training regulations.

**III. Discussion and Summary of the Proposed Rule**

**A. General Discussion**

Based on the assumption that shaft and slope construction was substantively different from extraction and production mining, we determined at the time of promulgation of part 48 in 1978 that the training for miners was not appropriate for shaft and slope work. At that time, commenters suggested that only those workers

regularly exposed to the many hazards associated with mining needed the full range of training. As such, shaft and slope construction workers and workers engaged in construction activities ancillary to shaft and slope sinking were excluded from the training regulations.

After reviewing the reports of fatal accidents from 1982 through August 2003, we believe that miners performing shaft and slope construction work should receive the same training as other underground and surface miners. From 1982 through August 2003, there were 15 fatalities in shaft and slope construction. This number includes the three miners killed in a shaft construction accident at the McElroy Mine, in West Virginia, in January 2003. A review of these accidents, and a review of shaft and slope tasks and operations, reveal two important factors: (1) The hazards that confront these workers are generally no different from hazards faced by all other underground or surface miners; and (2) while we recognize that there are some specialized shaft and slope tasks, shaft and slope construction workers perform a number of tasks that are similar to, or the same as, tasks performed by miners already covered by part 48 training. These tasks include drilling, blasting, mucking, welding and making gas examinations. In fact, in some instances, slope construction is being done by experienced miners using conventional mining equipment and methods.

After reviewing fatal accidents involving shaft and slope construction workers, we have concluded that miners performing shaft and slope construction should be trained like other underground and surface miners. From 1982 to August 2003, the coal mining industry recorded 43 methane ignitions during shaft or slope construction, 37 of these occurred while welding or cutting activities were being performed. In 1992, four miners were killed as the result of an ignition and in 2003, three miners were killed from an ignition. Eight additional shaft and slope construction fatal accidents also occurred during this period. Hoisting accounted for seven fatalities. Four of these involved victims falling from a platform or bucket which had become unstable; one victim was struck by a falling object; and two were hit by a shaft sinking bucket as it was being lowered. Another fatality occurred at a shaft construction site when a miner who was not tied-off fell down a shaft that did not have acceptable protection. These fatal accidents, involving falls, explosions, and impact, are similar to the accidents of other miners.

Effective training can better prevent such accidents. Part 48 is designed to impart the necessary knowledge and skills so that miners can work safely. Part 48 contains programs of new miner, experienced miner, task, annual refresher and hazard training. The training, for example, covers the work environment, mine conveyances, ground control plans, hazard recognition, mine gases, safe work procedures, and health and safety aspects of tasks. The training also addresses detecting and working safely around methane, tying-off properly to avoid falling, and working in clear areas to avoid being struck by overhead objects. Part 48 is flexible and adaptable to a variety of mining conditions, processes, and operations.

We are aware that some shaft and slope contractors already provide part 48 training to their shaft and slope workers. The proposed rule would assure, however, that complete training suitable to the hazards encountered is given on a timely basis. The proposed rule would require that training be given annually and upon a new assignment so that safety skills are maintained and enhanced. After the rule is published, MSHA will conduct outreach efforts to assist with the particular training needs of each shaft and slope operation.

The proposed rule would provide better training coverage and consistency for shaft and slope construction workers who have been excluded from the training requirements, and, therefore, improve miner safety and health. This proposed rule would be fully compliant with Section 101(a)(9) of the Mine Act, which requires that "no mandatory health or safety standard promulgated \* \* \* shall reduce the protection afforded miners by an existing \* \* \* standard."

#### *B. Section-by-Section Analysis*

##### **1. Sections 48.2(a)(1)(i)/48.22(a)(1)(i) Definitions**

The existing definitions of "miner" in §§ 48.2(a)(1)(i) and 48.22(a)(1)(i) exclude "shaft and slope workers" and "workers engaged in construction activities ancillary to shaft and slope sinking." We propose to amend the definitions of "miner" to include shaft and slope workers and workers engaged in construction activities ancillary to shaft and slope sinking. The proposed rule would encompass all miners engaged in "shaft or slope construction." Consequently, shaft and slope workers would be required to receive new miner, experienced miner, task, annual refresher and hazard training, as applicable.

The proposed rule would retain the training exclusion for mine construction workers, other than shaft and slope workers, and the reference to "subpart C," which is reserved for any separate mine construction training rule. The agency is setting aside the training coverage of the other mine construction workers for future rulemaking, as appropriate.

The proposed rule would also extend the short-term specialized contractor provision in §§ 48.2(a)(1) and 48.22(a)(1) to include shaft and slope construction workers. Shaft and slope construction workers may move from site to site. This provision would require short-term specialized contract workers who have received experienced miner training to receive hazard training at each new site.

We believe that most workers engaged in shaft and slope construction would be subject only to part 48 subpart A—Training and Retraining of Underground Miners, because typically most shaft and slope construction is performed underground. Subpart A training includes instruction in the mandatory health and safety standards applicable to the task. This instruction is not limited to underground standards but pertains to all standards that apply. Thus the subpart A training can cover the standards found in 30 CFR part 77 for shaft and slope sinking operations. If these miners are assigned a surface mining task, however, their subpart A training would be supplemented with surface task training under part 48 subpart B—Training and Retraining of Miners Working at Surface Mines and Surface Areas of Underground Mines.

Shaft and slope construction workers who work exclusively on the surface would be trained under subpart B only. Shaft and slope construction workers who divide their time on the surface and underground would be subject to training under both subparts A and B.

##### **2. Sections 48.2(b)(4)/48.22(b)(4)**

We would amend § 48.2(b) and § 48.22(b) to add a new paragraph (b)(4) to consider miners working as shaft and slope construction workers on the effective date of the final rule to be "experienced miners" under part 48. This requirement would preclude operators from having to interrupt scheduled operations to provide training for these miners. The workforce and current projects, therefore, would not be disrupted because of the rule.

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

We are proposing to amend § 48.3 and § 48.23 to add a new paragraph (o). Paragraph (o) would address shaft and slope construction training plans.

In general, the training plan is used by the mine operator to list the MSHA-approved instructors and provide a description of the teaching methods and the course materials. Each training plan must be approved before it can be used to conduct part 48 training.

Proposing a new paragraph (o) would allow shaft and slope operators 120 days from the date the final rule is published to submit a training plan. We would approve the plan or grant an extension within 60 days.

Existing paragraph (a) in § 48.3 and § 48.23 would be amended to refer to new paragraph (o).

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

We propose to amend existing paragraph (d). The existing paragraph established an annual refresher date for coal supervisors who had not previously been required to receive annual refresher training. This paragraph is no longer necessary and would be deleted because the time for compliance in 1999 is long past, and the provision serves no continuing purpose.

Proposed paragraph (d) would require all shaft and slope construction workers employed on the effective date of the final rule to receive annual refresher training no later than 12 months from the effective month of the rule. This would help ensure that the shaft and slope workers receive this training within the year and establish an initial anniversary date. Consistent with our existing policy, operators would be permitted to provide the annual refresher training at any time during the last calendar month of the miners' annual refresher training cycle.

5. Effective Date

Under the proposed rule, the final rule would be effective 180 days after publication, except that sections 48.3(o) and 48.23(o), pertaining to submitting a training plan to us for approval, would be effective on the publication date of the final rule.

#### IV. Regulatory Impact Analysis

##### A. Executive Order 12866 (Regulatory Planning and Review and Regulatory Flexibility Act)

Executive Order (E.O.) 12866 as amended by E.O. 13258 requires that regulatory agencies assess both the costs and benefits of intended regulations. We have fulfilled this requirement for the proposed rule, and have determined that the proposed rule would not have an annual effect of \$100 million or more on the economy. Therefore, it is not an economically significant regulatory action pursuant to section 3(f)(1) of E.O. 12866. Although this proposed rule is not an economically significant action, we have completed a preliminary Regulatory Economic Analysis (PREA) in which the economic impact of the proposed rule is estimated. For a complete breakdown of the compliance costs for this proposed rule see Chapter IV of the PREA. The PREA is summarized as follows:

##### 1. Compliance Costs

We have estimated the costs that shaft and slope construction contractors would incur in providing training to shaft and slope construction workers. We anticipate that most shaft and slope construction contractor workers entering the industry would previously have received 32 hours of underground and 24 hours of surface new miner training. In addition, in most cases, mine operators would be responsible for providing hazard training to the shaft and slope contractor employees who are working on their property.

We recognize that shaft and slope construction contractors are mine operators and their contractor workers are miners. For purposes of clarity in this discussion, we refer to shaft and slope construction operators as contractor firms and shaft and slope construction miners as shaft and slope construction workers. The proposed rule would treat shaft and slope construction workers (for training purposes) like other miners already covered under part 48. Shaft and slope construction workers include those who work in underground coal and metal and nonmetal mines and at the surface areas of underground coal and metal and nonmetal mines. For the purposes of the cost analysis, we used our traditional definition of a small contractor firm as one employing fewer than 20 workers, and a large contractor firm as one employing 20 or more workers. Since there were no costs to small coal or metal and nonmetal contractor firms that employ between one to 19 contractor employees, we did

not perform a separate impact analysis for that mine size category. To satisfy the requirements of the Small Business Regulatory Enforcement Fairness Act (SBREFA), we only have to consider a subset of the Small Business Administration's (SBA) definition of "small entities"—contractor firms that employ 20–500 contractor workers.

The total yearly costs of the proposed rule would be about \$161,000 for all coal contractor firms and \$34,000 for all metal and nonmetal contractor firms. In addition, coal contractor workers would incur yearly costs of about \$20,000, and metal and nonmetal contractor workers would incur yearly costs of about \$4,000. All cost estimates are presented in 2003 dollars.

##### 2. Feasibility

We have concluded that the requirements of the proposed rule are both technologically and economically feasible. This proposed rule is not a technology-forcing standard and does not involve activities on the frontiers of scientific knowledge. In addition, it would not require the purchase of any machinery or equipment to implement these training plans as prescribed in part 48. Therefore, we have concluded that this proposed rule is technologically feasible.

As previously stated in this chapter, the total costs of the proposed rule are about \$161,000 annually for all coal contractor firms and \$34,000 annually for all metal and nonmetal contractor firms. We combined coal and metal and nonmetal contractor firms together to estimate the yearly revenues because these contractor firms are not generally limited to one industry, and they could perform shaft and slope construction work at both coal and metal and nonmetal mines. The compliance costs are well under 1 percent of the yearly revenues of \$232 million for these contractor firms. We believe this is convincing evidence that the proposed rule is economically feasible.

##### 3. Benefits

From 1982 through August 2003, there were 15 fatalities in shaft and slope construction work. Most recently, three miners were killed in a shaft and slope construction accident in January 2003. In addition, there were 1,830 days-lost injuries reported for shaft and slope workers during that period. The hazards that shaft and slope construction workers face are generally no different from hazards faced by all other underground or surface miners. Current training regulations in 30 CFR part 48 exempt shaft and slope construction workers. We have

determined that the proposed rule, which would remove the language exempting shaft and slope construction workers from being required to take part 48 training, would provide safety benefits by including these workers. Shaft and slope construction workers, for training purposes, would now receive the same type of training provided to other miners working in underground or surface areas of underground mines. Shaft and slope construction workers work in hazardous mining conditions like other miners and often perform work similar to the other miners. Therefore, they should receive the same training.

We assume that the past history of mining fatalities and injuries can be used as a basis to forecast the number of mining fatalities and injuries in future years. We believe that lack of training is a major factor in the number of accidents and injuries involving shaft and slope construction workers. Conversely, we expect that training can contribute significantly to a reduction in accidents, injuries, illnesses, and fatalities by fostering safe work practices, increasing job skills, and enhancing hazard awareness and hazard prevention. The decrease in the number of fatalities and injuries which we have estimated is based on these assumptions.

Safety and health professionals from all sectors of industry recognize that training is a critical element of an effective safety and health program. Training informs miners of safety and health hazards inherent in the workplace and enables them to identify and avoid such hazards. Training further teaches miners health and safety principles and safe operating procedures in performing their work tasks. Training becomes more important with the influx of new and less experienced miners and mine operators, longer work hours to meet demands, and increased demand for contractors who may be less familiar with the dangers on mine property.

We estimate that there are approximately 19 coal and 4 metal and nonmetal operations (contractor firms with 20–500 employees) that employ shaft and slope construction workers. We estimate that compliance with the proposed rule would reduce the number of injuries and fatalities involving shaft and slope construction workers. We estimate that about 0.2 fatalities and 11 days-lost injuries would be prevented each year as a result of the proposed rule.

#### *B. Regulatory Flexibility Act Certification*

Pursuant to the Regulatory Flexibility Act of 1980 as amended, we have analyzed the impact of the proposed part 48 rule on small entities. Based on that analysis, we have preliminarily determined that this proposed rule would not have a significant economic impact on a substantial number of small entities. We have certified this finding to the SBA. The factual basis for this certification is discussed in chapter V of the PREA.

For contractors employing 20 to 500 contractor workers, the estimated yearly cost of the proposed rule is about \$161,000 for all underground coal contractors. While, for metal and nonmetal contractor firms, the estimated yearly cost is about \$34,000. The combined estimated yearly cost of the proposed rule for both coal and metal and nonmetal contractor firms is about \$195,000. For both industries, costs as percentage of revenues are well below one percent (0.08 percent for coal contractor firms and 0.02 percent for metal and nonmetal contractor firms) and therefore, we believe it is appropriate to conclude this proposed rule would not have a significant economic impact on a substantial number of small entities.

#### *C. Unfunded Mandates Reform Act of 1995 and Executive Order 12875 (Enhancing the Intergovernmental Partnership)*

For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12875, this proposed rule does not include any Federal mandate that may result in increased expenditures of more than \$100 million. We are not aware of any state, local, or tribal governments that either own or operate surface or underground mines.

#### *D. Paperwork Reduction Act of 1995 (PRA)*

The proposed part 48 rule has two provisions § 48.3 and § 48.23 that impose a paperwork burden requirement. This requirement does not involve a new training plan. It requires shaft and slope contractor firms to report paperwork burden hours and costs in the same manner as mine operators, and the reporting of this paperwork burden requirement is approved under OMB control number 1219–0009.

Underground coal contractor firms would incur about 171 paperwork burden hours in the first year after the rule takes effect, with associated burden hours costs of \$785; underground metal

and nonmetal contractor firms would incur about 36 paperwork burden hours with associated burden hours costs of \$178 the first year after the rule takes effect.

Underground coal contractor firms would incur about 52 annual burden hours and associated costs of \$1,066 starting in year two after the rule takes effect; underground metal and nonmetal contractor firms would incur about 11 annual burden hours and associated costs of \$237 starting in year two after the rule takes effect.

#### *E. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights*

This proposed rule is not subject to Executive Order 12630 because it does not involve implementation of a policy with takings implications.

#### *F. Executive Order 12988: Civil Justice Reform*

We have reviewed Executive Order 12988 and determined that this proposed rule would not unduly burden the Federal court system. We wrote the proposed rule to provide a clear legal standard for affected conduct and reviewed it carefully to eliminate drafting errors and ambiguities.

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

In accordance with Executive Order 13045, we have evaluated the environmental health and safety effects of this proposed rule on children and determined that it would have no adverse affect on children.

#### *H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

We certify that the proposed rule would not impose any substantial direct compliance costs on Indian tribal governments.

#### *I. Executive Order 13132: Federalism*

We have reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism and have determined that it does not have federalism implications.

#### *J. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

In accordance with Executive Order 13211 we have reviewed this proposed rule and have determined that it would have no adverse effect on the production or price of coal.

Consequently, it would have no significant adverse effect on the supply, distribution, or use of energy.

*K. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking*

In accordance with Executive Order 13272, we have thoroughly reviewed the proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations.

*L. National Environmental Policy Act*

We have reviewed this proposed rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 U.S.C. part 1500), and the Department of Labor's NEPA procedures (29 CFR part 11). Since this proposed rule would impact safety, not health, the rule is categorically excluded from NEPA requirements because it would have no significant impact on the quality of the human environment (29 CFR 11.10(a)(1)). Accordingly, we have not conducted an environmental assessment nor provided an environmental impact statement.

*M. Assessment of Federal Regulations and Policies on Families*

We have determined that this proposed rule would have no effect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, section 654 of the Treasury and General Appropriations Act of 1999 requires no further agency action, analysis, or assessment.

**List of Subjects in 30 CFR Part 48**

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

For reasons set forth in the preamble, we propose to amend Chapter I of Title 30.

**PART 48—[AMENDED]**

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

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

2. Section 48.2 is amended by revising paragraphs (a)(1) introductory text and (a)(1)(i) and by adding paragraph (b)(4) as follows:

**§ 48.2 Definitions.**

\* \* \* \* \*

(a)(1) Miner means, for purposes of §§ 48.3 through 48.10 of this subpart A, any person working in an underground mine and who is engaged in the extraction and production process, or engaged in shaft or slope construction, or who is regularly exposed to mine hazards, or who is a maintenance or service worker employed by the operator or a maintenance or service worker contracted by the operator to work at the mine for frequent or extended periods. This definition shall include the operator if the operator works underground on a continuing, even if irregular, basis. Short-term, specialized contact workers, such as drillers and blasters, who are engaged in the extraction and production process or engaged in shaft or slope construction and who have received training under § 48.6 (Experienced miner training) of this subpart A may, in lieu of subsequent training under that section for each new employment, receive training under § 48.11 (Hazard training) of this subpart A. This definition does not include:

(i) Workers under subpart C of this part 48, engaged in the construction of major additions to an existing mine which requires the mine to cease operations;

\* \* \* \* \*

(b) \* \* \*

(4) A person employed as a shaft or slope construction worker on the effective date of the final rule.

\* \* \* \* \*

3. Section 48.3 is amended by revising paragraph (a) introductory text and adding paragraph (o) as follows:

**§ 48.3 Training plans; time of submission; where filed; information required; time for approval; method for disapproval; commencement of training; approval of instructors.**

(a) Except as provided in paragraph (o) of this section, each operator of an underground mine shall have an MSHA approved plan containing programs for training new miners, training experienced miners, training miners for new tasks, annual refresher training, and hazard training for miners as follows:

\* \* \* \* \*

(o) Each operator engaged in shaft or slope construction shall have an MSHA approved training plan, as outlined in this section, containing programs for training new miners, training experienced miners, training miners for new tasks, annual refresher training, and hazard training for miners as follows:

(1) In the case of an operator engaged in shaft or slope construction on [insert

the publication date of final rule] the operator shall submit a plan for approval by [insert date 120 days from date final rule is published], unless extended by MSHA.

(2) In the case of new shaft or slope construction, the operator shall have an approved plan prior to commencing shaft or slope construction.

\* \* \* \* \*

4. Paragraph (d) of § 48.8 is revised to read as follows:

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

\* \* \* \* \*

(d) All persons employed as shaft and slope construction workers on [insert effective date of final rule] must receive annual refresher training within 12 months of [insert effective month of the final rule].

**Subpart B—[Amended]**

5. Section 48.22 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(i) and by adding paragraph (b)(4) as follows:

**§ 48.22 Definitions.**

\* \* \* \* \*

(a)(1) Miner means, for purposes of §§ 48.23 through 48.30 of this subpart B, any person working in a surface mine or surface areas of an underground mine and who is engaged in the extraction and production process, or engaged in shaft or slope construction, or who is regularly exposed to mine hazards, or who is a maintenance or service worker employed by the operator or a maintenance or service worker contracted by the operator to work at the mine for frequent or extended periods. This definition shall include the operator if the operator works at the mine on a continuing, even if irregular, basis. Short-term, specialized contract workers, such as drillers and blasters, who are engaged in the extraction and production process or engaged in shaft or slope construction and who have received training under § 48.26 (Experienced miner training) of this subpart B, may in lieu of subsequent training under that section for each new employment, receive training under § 48.31 (Hazard training) of this subpart B. This definition does not include:

(i) Construction workers under subpart C of this part 48;

\* \* \* \* \*

(b) \* \* \*

(4) A person employed as a shaft or slope construction worker on [insert the effective date of the final rule].

\* \* \* \* \*

6. Section 48.23 is amended by revising paragraph (a) introductory text and adding paragraph (o) as follows:

**§ 48.23 Training plans; time of submission; where filed; information required; time for approval; method for disapproval; commencement of training; approval of instructors.**

(a) Except as provided in paragraph (o) of this section, each operator of a surface mine shall have an MSHA approved plan containing programs for training new miners, training experienced miners, training miners for new tasks, annual refresher training, and hazard training for miners as follows:

\* \* \* \* \*

(o) Each operator engaged in shaft or slope construction shall have an MSHA approved training plan, as outlined in this section, containing programs for

training new miners, training experienced miners, training miners for new tasks, annual refresher training, and hazard training for miners as follows:

(1) In the case of an operator engaged in shaft or slope construction on [insert the publication date of final rule] the operator shall submit a plan for approval by [insert date 120 days from date final rule is published], unless extended by MSHA.

(2) In the case of new shaft or slope construction, the operator shall have an approved plan prior to commencing shaft or slope construction.

\* \* \* \* \*

7. Paragraph (d) of § 48.28 is revised to read as follows:

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

\* \* \* \* \*

(d) All persons employed as shaft and slope construction workers on [insert effective date of final rule] must receive annual refresher training within 12 months of [insert effective month of the final rule].

\* \* \* \* \*

8. Subpart C is added to part 48 and reserved to read as follows:

**Subpart C—[Reserved]**

Dated: July 7, 2004.

**Dave D. Lauriski,**

*Assistant Secretary of Labor for Mine Safety and Health.*

[FR Doc. 04-15842 Filed 7-15-04; 8:45 am]

**BILLING CODE 4510-43-P**