

MSHA Handbook Series

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



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General Inspection Procedures

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I. CONDUCT OF INSPECTORS

A. Ethics

Inspectors represent the Government and should act in a professional manner. Any conduct which would appear to be a conflict of interest with official duties should be avoided.

1. Gratuities, Gifts, Meals

MSHA employees may not solicit or ask for any item, regardless of value, from a company subject to MSHA inspections. Although the acceptance of inexpensive meals in certain situations such as meetings or conferences may be acceptable, it will always be inappropriate to accept them in conjunction with an inspection of a particular mine or meeting held to discuss inspection findings. In all cases, the inspector must avoid any act that might be construed as having influenced an inspector's decision or given preferential treatment to any individual or company. Employees who find themselves the possible beneficiaries of gifts or meals as indicated above should politely decline, stating it is against MSHA policy to accept such gratuities.

2. Conflicts of Interest

Employees of MSHA are prohibited from having any personal or private interest, direct or indirect, in any mine or the products of any mine or in technical research or other activities subject to MSHA inspection. Employees may not accept employment from any private party for services in the examination of any mine or private mineral property or issue any report on the valuation of any mine or other private mineral property. These restrictions do not apply to the temporary employment, in a consulting capacity or in the investigation of special subjects, of any engineer or other expert whose principal professional practice is outside MSHA. Exceptions to the above policy may be granted only by the Assistant Secretary on an individual basis for good cause.

Employees whose positions are listed in 29 CFR 0.735 are required to file an annual confidential disclosure of employment and financial interests as described in those regulations.

3. Membership in Unions

Membership in unions such as the United Steelworkers of America (USWA) is not prohibited. However, the holding of union offices, active participation in union activities, and use of union legal services while employed by MSHA are prohibited. The use of private attorneys who may also represent such unions is not prohibited.

4. Guiding Principles

MSHA employees are to avoid any action that may be construed as an attempt to influence or give preferential treatment to an employee or company. In addition, if employees are contemplating action they should review the regulations and obtain clearance and approval from their supervisor or agency head. Avoid situations that may give the appearance of using official positions for private gain. The employee should strive to be independent and impartial to ensure the confidence of the public and the integrity of the government. Violations of the Ethics and Conduct Regulations carry criminal penalties and could lead to dismissal from government employment and imprisonment.

Employees having questions concerning MSHA, DOL, or Federal government policies on ethics, conduct, conflict of interest, or who may be facing a conflict of interest situation should contact an MSHA Ethics Counselor.

5. Use of Government Vehicles

The Department of Labor Employee Handbook, OASAM, 1983, states in part that an employee shall not ... use ... government ... property ... for other than officially approved activities.

GSA requirements state that government-owned or leased vehicles be used only for official purposes. Vehicles assigned to employees on either a specific trip or on a monthly basis may be parked at or near the employee's residence during non-duty hours only if the employee is required by a supervisor to travel to a temporary duty post in the morning or return home at night without first reporting to the duty station. In such event an overnight Parking Authorization, DL1-177,

must be signed and approved by the immediate supervisor and the district manager to give employees approval to park the government-owned or leased vehicle at or near their residence during non-duty hours. Approval may be given for a single occasion, weekly, monthly, or yearly at the discretion of the approving official.

a. Transportation of Non-Official Passengers in Government-Owned or Leased Motor Vehicles

Authorized operators of government-owned or leased vehicles are prohibited from transporting non-government persons except when such persons are engaged in official government business.

b. Limitations on Use of Government-Owned or Government-Furnished Vehicles

When a government-owned or government-furnished vehicle is used by an employee for official travel, its use shall be limited to official purposes which include:

- (1) transportation between places where the employee's presence is required incident to official business;
- (2) transportation between places of temporary lodging when public transportation is unavailable or its use is impractical; and
- (3) transportation between the above places and suitable eating places, drugstores, barbershops, places of worship, cleaning establishments, and similar places necessary for the employee.

c. Government Drivers

Operators of government-owned or leased vehicles must:

- (1) meet the physical standards established by the Office of Personnel Management;
- (2) have a valid State, District of Columbia, or territorial drivers license; and
- (3) qualify on a road test.

District managers and the Chief, Branch of Property Management, in the National Office may approve employees as incidental operators after assuring themselves that the individual has met factors (1) through (3) above. If, in the approving official's opinion, the individual has a satisfactory driving record, the requirement for the road test may be waived by the approving official. At least once every 3 years

each employee approved as an incidental operator must be reevaluated on the above criteria and be reapproved as an incidental operator in order to continue operating government-owned or leased vehicles.

d. Use of Alcohol and Controlled Substances in Government Vehicles

The inspector's conduct is frequently under observation by the public and although the moderate use of alcohol during off duty hours is allowed, the use of alcohol or controlled substances while driving, or driving after its use, is prohibited.

e. Carrying of Firearms in Government Vehicles

Federal Property Management Regulation 101-20.313 provides that no person on Government-owned property shall carry firearms, explosives, or other dangerous or deadly weapons, either openly or concealed except for official purposes. The carrying of firearms is not an official requirement of any MSHA employee.

This provision also applies to motor vehicles which are construed as Government property. Therefore, firearms or other weapons or explosives are not to be transported in Government vehicles at any time.

f. Motor Vehicle Seat Belts

MSHA supervisors shall give drivers of government-owned vehicles facts concerning the value of seat belts and other approved restraints and the requirement to fasten them before starting the vehicle. A vehicle operated by an MSHA employee on official business shall not be put into motion by the driver unless their own and all passengers' seat belts are properly fastened.

This provision also applies to motor vehicles which are construed as Government property.

B. Inspectors' Appearance in Hearings or Court Trials

1. Preparation for Testifying

If the testimony concerns records, be familiar with the material. The witness should know what the records contain and be able to refer to them easily and readily.

If the testimony concerns some event that happened months, or even years before, inspectors should try to refresh their memory. If possible, return to the place where the event occurred. Try to visualize the exact scene. Note locations of physical objects and approximate distances, since the witness may be asked about these details. Talking with

others may help to recall details; however, the testimony must be direct recall, not what somebody else remembers or hearsay.

2. Attendance at Court or Hearings

Dress neatly, but do not overdress.

Avoid undignified behavior such as loud laughter or slovenly posture. Smoking and gum chewing are not permitted in the courtroom.

3. Testifying

When called as a witness, stand erect while taking the oath. Pay attention and say "I do" so that all can hear. Try not to be nervous; there is no reason to be. While on the witness stand the witness is sworn to tell the truth. Tell it!

Talk to the members of the jury, if there is one. Look at them and speak to them openly and frankly. Speak clearly and loudly enough so those farthest away can hear easily.

The witness should speak in his or her own words. There is no need to memorize testimony. Doing so is likely to make the testimony sound "pat" and unconvincing. Be natural. Listen carefully to each question. Understand before answering. Have the question repeated, if necessary. Never answer a question that is not fully understood.

Answer only the question asked. Do not volunteer information that is not requested otherwise, the answer may become legally objectionable under the technical rules of evidence and the witness may appear biased. Whenever possible answer directly and simply with a "yes" or "no." Some questions, however, cannot be answered with a "yes" or "no." Usually the ALJ or Judge will allow an explanation.

The judge or the jury want only the facts that have been observed and are not interested in conclusions or opinions. Usually, a witness will be unable to testify about what someone else said and only expert witnesses are allowed to give conclusions and opinions.

Whenever possible, give definite answers. When presenting facts, refrain from saying "I think," "I believe," or "In my opinion." There is absolutely nothing wrong in saying "I don't know." Be positive about the important things. If you can't recall details, say so.

Don't exaggerate. Be wary of broad generalizations. If the answer is wrong or unclear, correct it immediately. It's better to correct a mistake than to have an opposing attorney discover an error in the testimony. If you realize that you

have answered incorrectly, say, "May I correct something I said earlier?" or "I realize now that something I said earlier should be corrected."

Stop instantly when the ALJ interrupts or when the other attorney objects to what is said. Do not try to sneak in an answer.

Always be polite even if the attorney is not. Do not be argumentative or sarcastic. Testifying for a long period of time is surprisingly tiring and can cause crossness, nervousness, anger, careless answers, and a willingness to say anything in order to leave the witness stand. If these symptoms are felt, try to overcome them, or ask the ALJ for a 5-minute break or ask for a glass of water.

4. Procedures for Handling Requests Involving Third Party Litigation

MSHA continues to follow guidelines for employee testimony described in Section 2.20 of 29 CFR promulgated by the Department of Labor. Specifically, this policy relates to the following categories or requests:

- a. Subpoenas served on MSHA employees requiring them to testify or produce documents or other material in an administrative or judicial proceeding (including labor arbitrations and actions brought by individuals under Section 105(c)(3) of the Act) to which MSHA is not a party.
- b. Subpoenas served on MSHA employees requiring them to appear at a deposition or answer written questions involving an administrative or judicial proceeding (including labor arbitrations and actions brought by individuals under Section 105(c)(3) of the Act) to which MSHA is not a party.
- c. Written or oral requests to interview MSHA employees or to produce official MSHA documents or other material which may be utilized in a future administrative or judicial proceedings (including labor arbitrations and actions brought by individuals under Section 105(c)(3) of the Act) to which MSHA is not a party.

These procedures are not applicable when the matter involves cases initiated by MSHA before the Federal Mine Safety and Health Review Commission or the Federal courts or when the request is made by a U. S. attorney in an MSHA related case. In these instances the employee should inform the government attorney handling the case and, unless directed otherwise, comply with the request. When this cannot be achieved, the employee should notify the district manager who will contact the Office of the Administrator for assistance.

When a request outlined in categories a. or b. above is received by an MSHA employee, a copy of the request, along with all available pertinent information, such as any accident report and the name and telephone number of the requesting party, should be forwarded through the district manager, assistant district manager or subdistrict manager to the Office of the Administrator for approval. If time is of the essence the request should be handled by telecopier or telephone. Category c. requests should be directed to the Office of the Administrator by telephone.

Decisions to authorize requests involving subpoenas for testimony and depositions will be issued formally and in writing by the Office of the Solicitor. In the event the authorization must be granted or denied within a short period of time, an oral determination may be given by the Solicitor's Office on behalf of the Department of Labor. This will be confirmed in writing later.

It is MSHA's policy not to provide expert testimony in private civil litigation. Therefore, authorization for MSHA testimony will normally be restricted to factual information within the personal knowledge of the employee (i.e., obtained from the inspection or the corresponding accident report) and will not include responses to hypothetical questions or conjecture. If any questions arise as to what constitutes expert testimony in a particular case, the Counsel for Trial Litigation in the Solicitor's Office in Arlington, Virginia, may be contacted on FTS 8-235-1153.

When MSHA employees are authorized to testify, they are considered to be on official duty and entitled to use government travel and per diem. However, steps must be taken to ensure that MSHA recovers the travel costs of employees from the requesting party. To accomplish this, all vouchers will be submitted by the employee to the district manager who will in turn forward it to the Branch of Finance in Denver, Colorado, with an explanatory memorandum indicating that the appearance by the employee was authorized.

The Branch of Finance will reimburse the employee and bill the requesting party. In cases where reimbursement is tendered by the requesting party in advance of billing, any checks or other payments should be forwarded to the Branch of Finance with the voucher.

C. **Health and Safety Rules**

Inspectors shall comply with state and company rules and regulations except where they conflict with Federal standards or the performance of the inspector's duties.

D. Labor-Management Relations

Inspectors shall maintain a posture of impartiality toward labor and management. The inspector shall decline to give comment when a difference of opinion exists between labor and management on issues that are not covered under the Act, regulations, or standards.

E. Dispute Between Labor and Management

An inspector shall not cross picket lines, unless the inspector is specifically directed to do so by his or her supervisor.

F. Signing Company Release Forms

An inspector shall not sign a responsibility release form when entering a mine to perform his duties. An inspector may sign a check-in and check-out book located at the mine, provided that it does not involve release of liability. Denial of "right of entry" for not signing a release shall be reported in accordance with Section 108 of the Act.

G. Performing Work Other Than Inspections and Investigations

Other than providing technical or safety and health educational assistance, the inspector shall not assist any mine employee or official in the performance of work. An inspector's work at a mine shall include health and safety discussions related to the inspection.

H. Attempts to Influence MSHA Enforcement Efforts

Any attempt to influence the results of a mine inspection by the offer of money or other favors, must be reported to the Metal and Nonmetal Administrator, Deputy Administrator, or Administrative Officer immediately, through the chain of command. Attempts made to influence an inspection must not only be recognized and denied but must also be reported.

I. Special Investigations into Possible Civil and Criminal Violations of the Act

Under no circumstances will any Metal and Nonmetal personnel provide information to anyone outside of the Agency concerning a matter which is under investigation for a possible civil or criminal violation. Exceptions to this policy will be granted by the Administrator or his designee.

Appropriate Metal and Nonmetal personnel may advise persons being interviewed of the purpose of the investigation and may acknowledge the existence of an open special investigation. This policy is prompted by the interest of the Department of Justice in MSHA investigation of possible civil and criminal violations.

II. PREPARATION FOR INSPECTIONS AND INVESTIGATIONS

A. General

Knowledge of certain information and procedures is a prerequisite to the actual on-site inspection and investigation work. The following paragraphs should provide most of the information necessary to avoid or at least contend with misunderstandings on the part of those persons directly or indirectly connected with the inspection or investigation effort.

B. Advance Notice

Section 103(a) of the Act prohibits giving advance notice of inspections conducted by an authorized representative of the Secretary of Labor.

However, there are limited occasions when advance notice is contemplated by the Act. An implied exception to the prohibition against advance notice exists in Section 103(g)(1). In this case, where a representative of the miners or a miner gives notice of what he believes to be an imminent danger, the operator or his agent must be notified "forthwith." Such notification will usually have the effect of indirectly giving notice of an inspection.

The Act does not prohibit advance notice of investigative activities (activities which are not direct enforcement activities). However, notice of investigative activities shall only be given when there is a need for such notice. Clearance and direction must be obtained from the inspector's supervisor before notice is given for investigative activities. Investigative activities include:

- " obtaining information for health and safety research;
- " technical assistance, including field certifications;
- " obtaining information for petitions for modifications, etc.;
- " special investigations;
- " education and training;
- " investigation of discrimination complaints;
- " demonstrations of research or prototype equipment;
- " investigation of hazard complaints; and
- " compliance assistance visits (CAV).

Any information relating to inspection and investigation schedules, including inspector's mine assignments, shall be restricted solely to MSHA personnel who have need of such knowledge.

It is important to note that even in cases where direct enforcement activities are involved, it may be necessary to make some type of arrangement with personnel at the mine when certain preparations are essential to carry out enforcement activities. The important point to remember is that any arrangements or notice relating to an enforcement activity that is not essential to carry out that activity is considered to be "advance notice" as the term is used in Section 103(a) of the Act.

Clearance must be obtained from the inspector's supervisor before notice is given for preparation essential to an enforcement activity. In all cases where there is a representative of miners, when notice of either enforcement or investigative activities is given, it will be given to representatives of both the operator and the miners. Examples of possible essential preparations are described in the following items:

1. If an inspector intends to include a routine second- or third-shift inspection, it might be necessary for him to designate a time and meeting place so that the representatives of the operator and miners can be given an opportunity to accompany the inspector. Preselected meeting sites should not reveal the specific areas to be inspected. However, it is recognized that the normal progression of an inspection may reveal remaining areas to be inspected.
2. When special preparations are needed during an inspection for an examination of a mine power system, it is permissible for the inspector to make arrangements for the inspection of the electrical system during scheduled down time.
3. If it is necessary to interrupt an inspection for any cause, the inspector is permitted to inform the operator that the inspection is interrupted and will be resumed at the discretion of the inspector.

C. Pre-Inspection Contacts

Upon arrival at the property, the inspector shall notify representatives of both the miners and the operator of the intent to conduct an inspection. The highest ranking mine official on the property should be given an opportunity to participate in the pre-inspection conference.

D. Opportunity to Accompany Inspectors

Representatives of the operator and the miners shall be given an opportunity to accompany the inspector during the physical inspection of the mine and to participate in pre- and post-inspection conferences.

To carry out a thorough and orderly inspection, the inspector should not allow the unavailability of a miner or operator representative, or other unusual condition, to delay the start of an inspection. An inspector may limit the number of participants in the inspection party and require individuals with conflicting claims to reconcile their differences among themselves and select a representative. The inspector may accept anyone designated by the operator as the operator's agent.

Representatives authorized by the miners who wish to exercise their rights under Section 103(f) of the Act should meet the requirements of 30 CFR 40. If there is no authorized representative of miners, or if the inspector is unable to determine who is the representative, the inspector shall consult with a reasonable number of miners concerning matters of safety and health at the mine. These miners should be selected at random and represent the various phases of mining operations.

E. Right of Entry

Any authorized representative of the Secretary shall have the right of entry to, upon or through any mine for the purpose of making any inspection or investigation under the provisions of the Act. In the event an inspector is refused entry to a mine, threatened or harassed while making an inspection, the inspector must be familiar with the following terms, definitions and actions to be taken.

F. Denials of Entry

Denials of entry can be either: direct denials involving a confrontation or indirect denials involving interference, delays, and harassment.

Upon being denied right of entry, the inspector should first attempt to determine the reason for the denial. Was it direct or indirect? Specific procedures must be followed for the different types of denials:

1. Direct

Direct denials are those in which an operator or the operator's agent informs an inspector that an inspection of the mine will not be permitted.

The following situations are the most common reasons for direct denial. The operator chooses to be selective by denying entry to a specific inspector. This action could be considered a denial of entry to MSHA as a whole. The operator refuses to permit inspection based on the belief that MSHA does not have the right or authority because the mine is not subject to the Act or that a search warrant is necessary.

a. Denials Not Involving MSHA's Statutory Authority

When the operator informs an inspector that an inspection of the mine will not be permitted, and no challenge is made concerning MSHA jurisdiction, the following actions should be taken if the inspector can safely do so: the inspector should explain to the operator the mandatory inspection requirements in Section 103(a) of the Act and that there will be a citation issued and penalty assessed for the denial of entry. If after explaining MSHA's position to the operator, the inspector is still denied entry to the mine, the inspector shall issue a 104(a) citation citing a violation of Section 103(a) and establish reasonable time for abatement. Suggested time is 30 minutes unless circumstances necessitate other limits.

If upon conclusion of the abatement period the operator withdraws the denial and permits the inspection, the inspector should terminate the citation. However, if the operator still denies entry to the mine, the inspector should issue an Order of Withdrawal, (define the area affected by the order as "no area affected" unless specific hazards are present) and notify the immediate MSHA supervisor so that an injunctive action may be considered.

b. Denials Involving MSHA's Statutory Authority

When the operator refuses to permit an inspection based upon the belief that MSHA does not have the right or authority to inspect the mine, the inspector should explain to the operator the mandatory inspection requirements under Section 103(a) of the Act, and that there will be a citation and penalty assessed for the denial of entry. The inspector should carefully note the operator's response as to why the mine is not subject to the Act, then proceed as listed above in a. under denials not involving MSHA's statutory authority.

2. Indirect

Indirect denials are those in which an operator or his agent does not directly refuse right of entry, but takes roundabout action to prevent inspection of the mine by interference delays, or harassment. There must be a clear intent and proof of indirectly denying entry: for example, access to the mine is blocked by a locked gate or other means of blockage.

The mere fact that access to the mine is prevented by a locked gate, in and of itself, does not necessarily constitute a denial of entry. Mine management may have only closed the mine for the day and blocked the mine access road to prevent vandalism. However, when a locked gate is accompanied by continued production and deliberate avoidance of communication with the inspector the mine operator is

indirectly denying MSHA right of entry to the mine property. Some other examples are listed below. This list is not meant to be all-inclusive. Reference is made only to some situations which may constitute an indirect denial:

- a. refusal to furnish available transportation on mine property when it is difficult or impossible to inspect on foot;
- b. refusal to provide information or accompany inspectors into areas considered unsafe to travel without specific knowledge of the mine (i.e., knowledge of on shift blasting schedules in metal mines);
- c. withdrawing mine personnel when the inspector arrives;
- d. removing power from the mine or mine ventilation system when an inspector arrives (before or after production);
- e. denying access to the equipment or the immediate work area;
- f. deliberately withholding vital information (ownership, responsible person, name of operator, disposition of product, ownership of equipment, if critical to making the inspection, etc.); and
- g. denying entry for failure to have a search warrant. The Supreme Court, in the 1981 case of Donovan v. Dewey and Waukesha Lime and Stone Company, upheld the authority of MSHA to conduct warrantless inspections.

When the mine has an I.D. number and the operator is known and present and does not verbally refuse right of entry, but takes indirect action to prevent inspection of the mine, the inspector should explain (a) the particular actions which are considered to be a denial of entry; (b) the mandatory inspection requirements under Section 103(a) of the Act; and (c) that there will be a citation and penalty assessed for the denial of entry. If, after explaining MSHA's position to the operator, the inspector is still denied entry to the mine, a 104(a) citation shall be issued citing a violation of Section 103(a) of the Act.

If, upon the conclusion of the abatement period, the operator permits the inspection, the inspector should terminate the citation. However, if the operator still denies entry to the mine, an Order of Withdrawal shall be issued under Section 104(b) of the Act. (Unless specific hazards are obvious or known, define the area affected by the order as "no area affected.") The inspector's immediate supervisor should be notified so that injunctive procedures may be considered.

When the mine has an I.D. number and the operator is known

but not present, and access to the mine is indirectly denied, the inspector should return to the office, notify the immediate MSHA supervisor, issue a 104(a) citation for a violation of Section 103(a), and mail the citation to the operator by certified mail, return receipt requested. The inspector shall return to the mine site at the conclusion of the abatement period and terminate the citation if an inspection is allowed. If entry is still denied the inspector shall issue 104(b) Order of Withdrawal and notify the MSHA supervisor of the action taken so that injunctive action may be considered.

When the mine does not have an I.D. number and the operator is unknown, and access to the mine is indirectly denied, the inspector should return to the office, notify the supervisor, and assist in identifying the mine property and property owner to determine jurisdiction. When the property is identified and jurisdiction has been established, the inspector and the supervisor should meet with the operator or agent and request access.

The operator or the agent must be informed that he has been identified as the operator, owner, lessee, etc., that MSHA has evidence that the operation is under the jurisdiction of the Act, and the operator must be given a description of the circumstances which prevented access. The inspector should then explain the statutory right of entry and again attempt to gain entry to the mine property. Should a denial of entry again occur, the inspector and the supervisor should take appropriate action depending upon the type of denial received, as previously discussed.

G. Assault or Harassment of Inspectors

1. Enactment of Public Law 95-87

Section 111 of Title 18 of the United States Code makes it a Federal crime to forcibly assault, resist, oppose, impede, intimidate, or interfere with any person designated in Section 1114 of Title 18 while such person is engaged in, or on account of, the performance of his or her official duties. It is a crime to assault, intimidate, or impede MSHA employees who are assigned to perform investigative, inspection, or law enforcement functions. Thus, any person who assaults, intimidates or impedes an MSHA inspector while the inspector is engaged in, or on account of, the performance of his or her official duties, is subject to investigation and arrest by the FBI, prosecution by the U.S. Attorney in the Federal courts, and to a fine and imprisonment.

2. Procedures to Follow

MSHA policy requires the inspector to leave the scene where a confrontation appears to be developing into a situation where

an apparent violation of Section 1114 or 111 is about to occur. In order to avoid a confrontation, the inspector should inform the person(s) that an attack on an MSHA inspector is a Federal crime, and that the person(s) may be subject to investigation and arrest by the FBI. If an inspector believes that he or she may be subject to physical harm or assault, the inspector should leave the property immediately and promptly notify his or her supervisor.

If an inspector encounters harassment or delays during a mine inspection, the inspector should attempt to complete the inspection without further provoking the operator. Afterwards, the inspector's supervisor should be contacted.

In the event of an assault, intimidation, harassment, or the impeding of an inspection, the supervisor is responsible for collecting all the facts, reducing them to writing, and contacting the district manager, assistant district manager or subdistrict manager. The district manager, assistant district manager or subdistrict manager will notify the special investigations headquarters office for further instructions. If the inspection is not the result of an imminent danger complaint, no inspection personnel should return to the mine without approval from headquarters. If it is an imminent danger complaint, an inspector and a supervisor should again attempt to conduct the inspection. Normally, not more than two inspection personnel should be sent to the mine property at this time.

H. Suggested Equipment and Supplies for an Inspection

The following is a list of supplies and equipment that are necessary to conduct an underground inspection. No attempt is made to itemize all instruments for the various gases that occur in mines. It is the inspector's responsibility to be prepared for the inspection and to have any other specialized equipment that is necessary to conduct health and safety inspections of mines and mills located in his assigned area. That equipment may include:

- " protective hat;
- " safety-toed boots or shoes;
- " safety glasses;
- " hearing protection;
- " dust respirator (fit-tested);
- " snug-fitting clothing;
- " lamp belt with identification tag attached and one extra identification tag for check-in/check-out;
- " electric cap lamp and charger;

- " draeger gas test kit with tubes;
- " torque wrenches;
- " oxygen indicator;
- " anemometer and stop watch;
- " aspirator bulb and smoke tubes;
- " measuring tape and rule;
- " self-rescuer;
- " camera;
- " other specialized equipment as needed;
- " previous inspection report with copy of Legal I.D.;
- " copy of Federal Mine Safety and Health Act of 1977;
- " safety and health standards book;
- " copy of this handbook;
- " A Guide to Miners' Rights and Responsibilities Under the Federal Mine Safety and Health Act of 1977;
- " citation and continuation books;
- " notebook and black ink pens; and
- " other pertinent forms as needed.

I. **Use of Cameras**

The district manager, assistant district manager or subdistrict manager may authorize camera use during inspections of metal and nonmetallic mines subject to the following special restrictions:

1. All non-gassy metal and nonmetal mines: there are no restrictions on camera use.

2. All gassy metal and nonmetal mines: tests for methane must be performed prior to any use of a camera. If methane is present at levels in excess of 1%, or if the inspector has reason to believe methane is present, only photographic equipment approved for use in gassy mines by the Approval and Certification Center shall be used.
3. All gilsonite mines: cameras are prohibited.

Inspectors shall make a record of the physical conditions under which the photographs are taken along with the date, time, place, and citation number (if applicable).

A refusal to permit the inspector to carry a camera into the mine will be considered a violation of Section 103(a) of the Act and could also be considered an interference or hindrance of the inspector in carrying out the provisions of the Act. If there is a refusal to allow an inspector to take a camera into the mine, an appropriate citation should be issued, and a record should be made of the reason(s) for taking the camera into the mine. The inspection should then be completed.

III. CONDUCTING INSPECTIONS AND INVESTIGATIONS

A. General

Inspections and investigations consist of three main phases: work done by the inspector prior to actually going to the mine, work done at the mine, and work done after the mine visit.

1. Work done by the inspector prior to actually going to the mine.

a. Getting paperwork together, packing up all necessary equipment, checking incident rates, etc.

b. Briefings and Mine Inspection Assignments

When travel area assignments or individual mine assignments change, the inspector who has had the mine assignment will brief the new inspector prior to the first mine visit. Adequate information will be included to ensure substantial knowledge is communicated concerning:

- 1) major construction projects;
- 2) special mining conditions;
- 3) recurring injuries;
- 4) health concerns;
- 5) ongoing compliance problems; and
- 6) any other significant information concerning safety and health at the mine to be inspected.

A general description of the conditions and practices that exist at the mine will also be communicated. Documentation of this briefing shall be included with the next report of an inspection at the mine by the newly assigned person.

Except where permitted by the Office of the Administrator, Metal and Nonmetal inspection supervisors shall change mine assignments annually. The intent of assignment rotation is to ensure work assignments are equitably distributed and that the inspections benefit from each inspector's background. This also affords miners an opportunity to discuss working conditions with all the inspectors from a field office.

Inspection supervisors shall maintain a list of all mines assigned to their field office with the names of persons assigned to conduct inspections at each mine. This list shall be maintained a sufficient period of time to indicate that inspector assignments have been rotated as intended.

c. Review of Mine File

Enforcement personnel shall comprehensively review the mine file prior to conducting the first inspection after receiving the assignment or reassignment of the mine. At a minimum, the mine file review shall include:

- 1) mine inspection reports for the prior 2 years;
- 2) outstanding citations or orders;
- 3) whether the mine is on the 104(d) or 104(e) violation series;
- 4) health ranking data;
- 5) training plans required under 30 CFR Part 48;
- 6) mine ventilation plans;
- 7) escape and evacuation plans;
- 8) Legal Identity Reports;
- 9) injury, illness, and accident reports submitted under 30 CFR Part 50;
- 10) information concerning independent contractors at the mine;
- 11) petitions for modification granted for the mine; and
- 12) any other significant information concerning safety and health at the mine to be inspected.

The file shall be reviewed prior to the on-site inspection by each inspector who participates in the inspection. Enforcement personnel shall include documentation of the review with the next report of an inspection at the mine.

Subsequent inspections of the same mine by the same inspector shall also include a mine file review, but may require only a review of the updates and additions since the prior inspection. Documentation of this review will be included with the next report of an inspection at the mine.

2. Work done by the inspector at the mine. This would include, but is not limited to the following:
 - a. A pre-inspection conference with the highest ranking official available and the miners' representative where the purpose and scope of the inspection/investigation should be discussed and necessary arrangements made. A separate conference must be held if either party chooses not to meet as one group. Severity and incidence rates should be discussed at this time.
 - b. A check of all required training certifications, plans, and records. See F.1. Check List.
 - c. Standards requiring examination or inspections. More than 30 Metal and Nonmetal mandatory standards require

examinations or inspections to be conducted by mine operators. See F.2. Check List. Each of these standards has requirements unique to it. Enforcement personnel must carefully review the requirements of such standards to determine whether or not they apply to conditions found during MSHA inspections and investigations. If an MSHA inspector finds a citable hazardous condition, there may be a violation of an examination or inspection standard as well.

Consequently, during each regular inspection, MSHA enforcement personnel shall gather the necessary facts to determine:

1. whether a required examination or inspection was conducted;
2. when the examination or inspection was made;
3. who conducted the examination or inspection and, if the standard requires a specific qualification for that person, what the examiner's qualifications were; and
4. whether the examination or inspection complied with each element of the standard.

If an inspector finds that no required examination or inspection was conducted or that it was inadequate, that violation shall be cited. This citation shall be issued in addition to any which cite the primary standard for the hazard. Citations issued for violation of an examination or inspection requirement shall include, when appropriate, a description of any hazardous conditions found.

Inspectors shall carefully consider the gravity and negligence of citations and orders issued for the failure of the mine operator to examine or inspect the mining environment for unsafe conditions and practices.

Failure of a competent or qualified person to conduct adequate examinations or inspections can expose miners to unsafe acts or conditions and, under normal continued mining operations, may constitute a significant and substantial violation.

Failure of a mine operator to conduct examinations or inspections for unsafe acts or conditions may, in the absence of mitigating circumstances, be considered highly negligent and, where such negligence is found, would be the basis for finding an unwarrantable failure to comply.

- d. Complete "walk-around" of the site.
- e. Health surveys - full shift samples for dust, noise, fumes, etc.

- f. Issuance of citations, orders, and compiling notes of inspection activities. Citations and orders should be written and issued as soon as possible after observing the violations. The text of the citations and orders must support the evaluation blocks which have been checked and the gravity depicted.
 - g. A post-inspection conference shall be conducted after the completion of an inspection. Representatives of the operator and the miners shall be given the opportunity to participate in the conference. Joint conferences are to be encouraged, but the inspector should hold separate post-inspection conferences when requested by either management or labor. All actions taken, which are to be included in the report, should be discussed at the conference(s). The inspectors should organize their notes and be in a position to lead the post-inspection conference.
3. Work done by the inspector after the mine visit. This would include, but not be limited to:
- a. report writing with necessary MIS data;
 - b. supplementary report with citations as lab results are obtained; and
 - c. possible compliance follow-up inspection.

B. Inspection of Mines on Idle Shifts

Inspection of mines or mills on idle shifts shall be limited to places where conditions are practically the same as they would be on working shifts. Escapeways, travelways, and explosive and material storage areas would not be significantly different and could be inspected on idle shifts. At underground mines, shaft inspections could be held during this time. All other areas of the operation where conditions, procedures, practices, or methods could affect the health or safety of the worker shall not be inspected during these down periods.

C. Second- and Third-Shift Inspections

The inspector shall make sufficient inspections in multi-shift operations to determine that safe conditions exist and that proper work procedures and practices are applied on all shifts.

D. Inspection of Each Phase of Mining Cycle

Enforcement personnel shall observe each phase of the mining cycle that occurs during each regular inspection of a mine or mill. The term "mining cycle" can include, but is not limited to, activities such as drilling, blasting (including hang-up blasting), mucking, timbering, scaling, and the transfer of ore. If a phase of the mining cycle, such as blasting, only occurs once somewhere in the

mine during an inspection, the inspector must make every effort to observe the conditions and practices associated with the blast.

While inspectors are not required to observe the complete mining cycle at every working place, they must evaluate enough conditions and practices and ask sufficient questions of miners to be reasonably assured that work is being safely conducted during the portions of the cycle that could not be observed.

These observations, conversations, and physical examinations of work conditions and practices shall be documented by enforcement personnel on the appropriate MSHA Field Notes.

E. Notes

The inspector must keep clear, concise, and factual notes during the inspection or investigation. Good notes are essential in order to effectively conduct the post-inspection conference and to write the final report. Basic to writing a report is the organization of all pertinent information into clear factual notes. Notes may prove essential if facts are questioned. All such notes are the property of MSHA and shall be kept in the official files in the district office. Notes must be made for each citation, termination, order, or modification.

F. Check Lists

1. During each regular inspection the following listed standards which require either a plan, certification, record or training should be checked to determine operator compliance. This list replaces the check list depicted on the inside flap of the Safety Field Notes Booklet, MSHA Form 4000-49, November 82 (Revised):

Standard Number	Brief Description	Legend	Part No.	
			56	57
.3461	Rock Bursts	P		X
.3203	Rock Bolt Tests	C	X	x
.4201	Firefighting Equipment	C	X	X
.4361	Evacuation Drills	C		X
.4363	Escape and Evacuation Instruction	C&T		X
.8520	Mine ventilation System	P		X
.8525	Main Fans - Maintained	R		X
.5037	Radon Sampling Procedures	R		X
.5040	Calculation and Record of Individual Exposures to Radon	R		X
.5047	Gamma Exposure	R		X
.14100	Self-Propelled Equipment	R	X	X
.11053	Escape and Evacuation Plan	P&T		X
.12028	Continuity and Resistance	R	X	X
.13015	Compressed Air Receiver Inspection	R	X	X
.13030	Fired Pressure Vessels (Boilers)	R	X	X
.18002	Examination of Work Places	R	X	X
.18010	First Aid	T	X	X
.18028	Mine Emergency and Self-Rescuer	T&R		X
.19057	Hoist Person - Medical Certificate	R	X	X
.19121	Shafts and Hoisting Equipment	R	X	X
Part 40	Representatives of Miners	R	X	X
Part 41	Notification of Legal Identity	R	X	X
Part 45	Independent Contractors	R	X	X
Part 48	Health & Safety Trng./Retrng.Miners	R	X	X
Part 49	Mine Rescue Teams	P,R&T		X
Part 50	Subpart C 50.20 Reporting Accidents Injuries, Illnesses			
	Subpart D 50.30 Quarterly Employ.	R	X	X
<u>LEGEND:</u>	<u>C=CERTIFICATION</u>	<u>P=PLANS</u>	<u>R=RECORDS</u>	<u>T=TRAINING</u>

2. Inspectors should use this check list to insure compliance with all mandatory standards that require an examination or inspection to be made by the mine operator.

Metal and Nonmetal Examination and Inspection Standards

- 56/57.3401 Examination of ground conditions.
- 56/57.4201 Inspection (of fire fighting equipment).
- 56/57.4532 Blacksmith shops.
- 57.4660 Work in shafts; raises, or winzes and other activities involving hazard areas.
- 57.4761 Underground shops
- 56/57.6306 Loading and blasting.
- 56/57.6311 Handling of misfires.
- 56/57.7003 Drill area inspection.
- 56/57.9304 Unstable Ground.
- 56/57.10002 Inspection and maintenance.
- 56/57.13015 Inspection of compressed-air receivers and other unfired pressure vessels.
- 56/57.13030 Boilers.
- 56/57.14100 Safety defects; examination, correction and records.
- 56/57.18002 Examination of working places.
- 56/57.19023 Examinations.
- 56/57.19109 Shaft inspection and repair
- 56/57.19120 Procedures for inspection, testing, and maintenance.
- 56/57.19129 Examination and tests at beginning of shift
- 56/57.19131 Hoist conveyance connections.
- 56/57.19132 Safety Catches.
- 56/57.19133 Shaft
- 56/57.19134 Sheaves
- 57.22206 Main ventilation failure (I-A, II-A, III, and V-A mines).
- 57.22214 Changes in ventilation (I-A, II-A, III, and V-A mines).
- 57.22229 Weekly testing (I-A, III, and V-A mines).
- 57.22230 Weekly testing (II-A mines).
- 57.22601 Blasting from the surface (I-A mines).
- 57.22602 Blasting from the surface (I-C mines).
- 57.22603 Blasting from the surface (II-A mines).
- 57.22605 Blasting from the surface (V-A mines).
- 57.22606 Explosive materials and blasting units (III mines)

G. Types of Inspections and Investigations

1. Regular Inspections

A regular inspection is an inspection of a mine units entirety to determine if an imminent danger exist sand if there is compliance with standards, citations, orders or decisions issued, or other requirements of the Act. All inspections of full-time active and intermittent mines shall be designated as regular inspections when a regular inspection has been scheduled, as long as any type of work activity is being conducted at the site.

2. Section 103(i) Inspections

Inspectors shall conduct Section 103(i) inspections at the following intervals for specific conditions:

- a. Every 5 working days, at irregular intervals, in mines:
liberating more than one million cubic feet of methane or other explosive gas in a 24-hour period; or
where a methane or other gas ignition or explosion has occurred in such mine which resulted in death or serious injury at any time during the previous 5 years;
or
when some other especially hazardous condition exists.
- b. Every 10 working days, at irregular intervals, in mines liberating more than 500,000 and up to one million cubic feet of methane or other explosive gas in a 24-hour period.
- c. Every 15 working days, at irregular intervals, in mines liberating more than 200,000 and up to 500,000 cubic feet of methane or other explosive gas in a 24-hour period.

3. Compliance Follow-Up Inspections

These inspections are conducted to determine the status of citations, notices, and orders issued during a previous inspection.

4. Compliance Assistance Visit (CAV)

Under the CAV program for metal and nonmetal mines, MSHA inspectors may make visits to mines in certain situations listed below to point out potential violations without monetary civil penalties being proposed, based on Section 502(b) of the Act which directs the Secretary "... to the greatest extent possible, [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." A CAV would be conducted only after a request is made by an operator to the appropriate district manager, assistant district manager or subdistrict manager. Such requests should be made at least 1 to 2 weeks in advance of the desired date of visit.

The situations where the CAV program is applicable are:

- " new mines not yet producing;
- " seasonal, closed, or abandoned mines prior to reopening; and

" new facilities or new installations of equipment in an operating mine.

The CAV will cover one or more of the following areas as requested by the operator:

- " miscellaneous iron installations (guards, walkways, stairways, etc.);
- " equipment with moving parts (conveyor belts, crushers, screens, etc.);
- " mobile equipment (trucks, loaders, etc.);
- " proposed plans and designs;
- " planned training; and,
- " other areas as appropriate.

The conduct of a CAV is limited to the future uses of the mine, installation, or equipment under construction. The inspector, while conducting a CAV, will issue notices of violations whenever he observes a potential violation. Each notice will be clearly marked "CAV-NONPENALTY" and will not be included in the assessment process. Operators should be aware, however, that regular inspections will be made of the operations once they have begun and that during the regular inspections the inspector will look at all of the notices issued during the CAV to ensure that the conditions and practices noted have been corrected. If the correction has not been made, an appropriate citation or withdrawal order will be issued. No additional penalty, monetary or otherwise, will be proposed solely because of the previous CAV.

The inspector, in conducting a CAV, is to proceed directly to the site of the CAV and is not to conduct a regular inspection of the premises. However, should an imminent danger situation be observed, an appropriate order will be issued.

5. Special Inspections - Procedures for Processing Hazardous Conditions Complaints —

a. Processing Hazardous Conditions Complaints

Section 103(g) of the Act provides representatives of miners or a miner (if there is no representative of miners), the right to obtain an immediate inspection when he or she has reasonable grounds to believe that a violation of the Act or of a mandatory health or safety standard exists, or that an imminent danger exists.

In order to invoke the procedures of Section 103(g)(1)

or (g)(2), the complaint must be reduced to writing and must be signed by the representative of miners or by the miner. However, many times, complaints concerning hazardous conditions do not meet the technical requirements of Section 103(g). The health and safety of miners are best served by examining all notifications of the possible existence of hazardous conditions, even though a specific complaint may not strictly adhere to these requirements. Accordingly, all complaints of alleged hazards, both from within and outside the context of the Procedures for Processing Hazardous Conditions Complaints in 30 CFR Part 43, must be evaluated. If appropriate, inspection steps must then be taken.

Furthermore, any written notification of an alleged violation or of an imminent danger received from a miner at a mine shall receive the same consideration and attention as that of a notification received from a representative of miners.

For investigation purposes, Code-a-Phone complaints will be treated in the same manner as complaints received in writing. Any Code-a-Phone message that mentions any of the following words: "methane," "gas," or "percent of;" or which describes any situation which may be an imminent danger, must be immediately brought to the attention of the Coal or Metal/Nonmetal Chief, Division of Safety, for processing. The appropriate district manager must then be notified by telephone to expedite an inspection/investigation. A copy of or a transcript of the Code-a-Phone tape recording is to be subsequently mailed to the district. After the inspection/investigation is complete, the district must send a copy of the investigation report to the appropriate Chief, Division of Safety.

All other Code-a-Phone complaints must be mailed promptly to the appropriate district manager. An inspection/investigation is then to be conducted, and a report of its results must be mailed to the appropriate Chief, Division of Safety.

If a 103(g) complaint is received, and if it is determined that a special inspection is not warranted, a written notice of such determination shall be issued as soon as possible to the representative of the miner(s) or to the complainant.

If a special inspection is conducted, the MSHA inspector will notify the operator of the complaint pursuant to 30 CFR 43.4(c), but the

inspector must not divulge to the operator the name of the complainant or the names of any individuals referred to in the complaint.

If the inspector finds that the alleged violation or danger exists, he/she shall issue the proper citation(s) or order(s). However, if, before leaving the mine, the inspector finds that no violation(s) or imminent danger connected with the complaint exists, he/she shall verbally convey this finding both to appropriate company and union officials. In addition, upon completion of a 103(g)(1) inspection in which a negative finding of violation is made, the inspector shall provide written notification of that fact to the operator and to the representative of miners or to the miner, before the inspector leaves the mine property. This notification will be written in longhand on the appropriate MSHA form. Any violation observed that does not specifically relate to the complaint shall be so identified in the investigation report.

Where the representative of miners or the miner invokes the procedures in Part 43, but disagrees with the inspector's conclusion(s), including, for example, the inspector's failure to issue an "unwarrantable" citation or order, the review procedures in Section 43.7 may be utilized.

b. 30 CFR 43.7 Informal Review

Where a written complaint under Section 103(g) of the Act has been submitted to MSHA and the authorized representative refuses to issue a citation with respect to the alleged violation or imminent danger, the representative of miners or miner may obtain review of the refusal in accordance with the procedures outlined in 30 CFR Section 43.7(b).

This informal review procedure also applies to complaints by representatives of miners or miners for failure on the part of the authorized representative to issue a 104(d) "unwarrantable" citation or order, even though a 104(a) citation or order was issued.

After receipt of the written request for review, the district manager will follow the procedures in 30 CFR 43.7(c) and (d). The district manager's determination in the matter shall be final.

6. Discrimination Complaint Investigation

Section 105(c)(1) of the Act, prohibits any person from being discharged or in any manner discriminated against because such person has filed or made a complaint alleging a health or safety violation in a mine.

Section 105(c)(2) of the Act provides that discrimination complaints may be filed with the Secretary of Labor. The following are to be adhered to in the implementation of Section 105(c):

- a. Before an official investigation may begin on a discrimination complaint, a document alleging discrimination must be signed by one or more of the persons allegedly discriminated against.
- b. The document can, and must, be received by an MSHA employee in any MSHA office. All MSHA enforcement personnel are expected to be familiar with the provisions of Section 105(c) in order to receive complaints in the absence of field office supervisors and in order to be capable of responding to questions posed during inspections.
- c. Complaints of alleged discrimination shall not be accepted by inspectors and other MSHA personnel when they are not in an MSHA office because potential delays would seriously affect the tight investigation time-table set forth in the Act.

Section 105(c)(3) of the Act states, in part, that:

"Within 90 days of the receipt of a complaint filed under paragraph (2), the Secretary shall notify, in writing, the miner, applicant for employment, or representative of miners of his determination as to whether a violation has occurred."

Departmental policy, as set forth by the Assistant Secretary of Labor for Mine Safety and Health, mandates that MSHA's investigation and decision apparatus involve several responsible departmental elements. These include Special Investigation headquarters' personnel and regional and headquarters attorneys in the Office of the Solicitor.

In order to achieve the 90-day statutory timeframe, MSHA policy requires, to the extent possible, that within 45 days of the receipt of the complaint, the special investigator shall complete the investigation, prepare a final report, and submit it by certified mail to the headquarters office.

The final report shall include a cover sheet

indicating: the date the complaint was received, the deadline for submitting the report to the headquarters office, and the date the final decision must be made. Recommendations and conclusions by the investigator, based upon the facts gathered during the investigation, shall be attached to the final report.

The recommendations will not be a part of the official investigative report, but will be used in assisting the MSHA headquarters office and the Solicitor's Office in arriving at a decision whether a violation of 105(c) has been established, and whether a complaint should be filed.

The decision to go forward with a discrimination action shall be made by the appropriate Solicitor's Office. However, when desirable, an MSHA-Solicitor conference to review the case may be held by telephone or in person. The Solicitor's review and any conference and subsequent requests for additional information will, to the extent possible, be accomplished during the remaining 45 days of the statutory timeframe.

7. Petitions for Modification Investigation

a. Authority

For the purpose of conducting an investigation and preparing the written report of the investigation, these instructions supersede all previous instructions on this subject.

Section 101(c) of the Act provides in part:

Upon petition by the operator or the representative of miners, the Secretary may modify the application of any mandatory safety standard at a mine if the Secretary determines that an alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard, or that the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

Section 30 CFR 44.13 delegates to the Administrator authority to issue a Proposed Decision and Order regarding petitions for modification. Additionally, 30 CFR 44.4(c) provides in part:

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 safety standard. The petitioner has the burden of establishing, by a preponderance of the evidence that the application of the mandatory safety standard will result in a diminution of safety to the miners in the subject mine, or that an alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded by the standard.

b. General Purpose

The duties of the investigator are to make a physical investigation of the subject of the petition for modification and to prepare a report of the findings.

The investigator may, if the circumstances warrant, furnish such recommendations as may be appropriate for consideration by the headquarters office.

The procedures as outlined below shall be followed by all MSHA personnel who are involved in a Section 101(c) investigation.

The petition shall be thoroughly reviewed to determine the issues involved in the petition, i. e., the allegations made by the petitioner as to the reasons for requesting the modification of the specific regulation, whether (1) an alternative method or (2) a diminution of safety.

If petitioner alleges that the application of such standard to a mine will result in a diminution of safety to the miners in that mine, each specific allegation listed in the petition must be investigated and addressed in the report, even though the operator is in compliance with the regulation.

Make accurate observations, measurements, and take samples, etc., for determining the validity of any statements made in the petition with regard to the request for modification.

Do not make any statements during the investigation concerning the relative merits of the

requested modification which could be construed as immediately granting the petition, or which could be interpreted to imply that the petition will be granted.

c. Investigation Procedures

If two or more persons are assigned to the investigation, they shall meet to review the petition and to determine exactly what standard the operator is seeking to modify.

If references are made in the petition to specific policies, obtain copies of these documents to determine what effect they may have on the investigation.

Contact may be made directly to the Chief, Division of Safety, with any problems within the scope of the investigation, or if a determination is made that additional assistance, such as the use of technical experts, may be required.

Contact shall be made with the petitioners, informing them of:

- " when the investigation will be conducted;
- " what areas of the mine will be visited;
- " what equipment or facility will be observed or examined;
- " what persons will be interviewed; and
- " the option of the parties to be present during the entire investigation.

All areas of the mine which may be affected by the petition shall be personally visited by the investigator. Do not rely on second-hand information or information gained from prior visits to the mine.

Photographs, drawings, charts and similar material shall be obtained and, where appropriate, included in the investigative report.

Communications between the investigators and the petitioner's attorneys should be avoided. One should refer the petitioner's attorneys to the Chief, Division of Safety, if they have any questions concerning the investigation.

Where an alternative method of achieving the

results of the standard is being proposed, the investigators should test the alternative method if at all possible.

d. The Investigative Report

The investigation shall be thorough and complete, and all areas, including any equipment affected by the petition, shall be personally visited and examined by the MSHA investigator for the purpose of determining the merits of the petition. All findings made by the investigator, including measurements and other relevant facts, shall be clearly stated in a written, signed investigative report.

The investigator shall prepare a report of findings and submit it to the Chief, Division of Safety, through the subdistrict manager, assistant district manager and district manager, who shall countersign the report indicating approval or disapproval.

A response to each allegation in the petition must be considered and appear in the investigative report. The response will be based on the information gathered during the investigation and information known to the investigator. The report of the investigation shall include the dates of the physical investigation of the mine and all areas (sections) of the mine visited relating to the 101(c) investigation, and the names of all persons taking part in the investigation. At the beginning of the report, there shall be a brief general summary of the type of mine involved in the petition, the number of working areas or levels in the mine, the number of workers employed in various areas, and the daily schedule.

There shall be discussion in the report concerning the mining methods, equipment and any special conditions found in the mine as they relate to the petition.

It shall be clearly specified in the report upon what basis the petitioner is seeking a modification, i.e., alternative method of achieving the results of the standard, diminution of safety, or both.

In drafting the report of the investigation, statements such as "the petition has merit" or "it is the opinion of the investigator that the petition should be withdrawn" should not be a part of the investigator's report.

If an investigator believes that the petition, as presented, does not justify a modification of the

safety standard and the investigator believes the petitioner could justify his request for the modification by making certain changes or additions in his petition, the investigator should include such recommended changes or modifications to the Chief, Division of Safety for his consideration and possible inclusion as a recommendation for stipulations.

If the investigator concludes that the petition should be denied, the investigator must state all pertinent facts and then follow with substantive reasons for this recommended denial.

The investigator shall retain a copy of the report and no further distribution shall be made except by the Arlington office.

e. Provisions for Terminating the Investigation

Whenever an inspector goes to a mine to conduct an investigation under the provisions of Section 101, Petition for Modification, and is informed by a responsible official of the company that the petition will be withdrawn, the inspector will prepare a memorandum documenting the conversation. The memorandum shall be reviewed and appropriate recommendations made and forwarded to the Chief, Division of Safety.

When the mine in a petition has changed ownership, the investigation of the petition shall be made unless the new owner submits a withdrawal of the petition.

Whenever an inspector goes to a mine to conduct a 101(c) investigation and finds that the mine or any of the following circumstances or conditions preclude an investigation, a memorandum containing substantial and specific evidence shall be prepared and submitted to the Chief, Division of Safety:

- " the mine is not working and the operator cannot give a definite date as to when access to the areas or equipment can be made;
- " the entire mine is closed or sealed for any reason;
- " the inspector is denied entry; or
- " the mine is permanently abandoned, or temporarily abandoned with no definite

date of resumption of production or activity.

f. Conclusion

When a request from the Chief, Division of Safety, is received for a 101(c) investigation by the district office, the investigators shall promptly initiate the investigation as to the merits of the petition. The investigative report should be in the Division of Safety within 30 days.

One of the objectives is to make the investigation in a timely manner, recognizing that there may be other reasons why the investigation cannot be made within the time established. When this occurs, the Division of Safety is to be informed of the reasons, and additional time requested.

8. Treasury (ATF) Compliance Inspections by MSHA Inspectors —

a. General

MSHA inspectors will conduct compliance inspections during each of their regular inspections of mine operators holding permits or licenses under 18 U.S.C. 841 et seq. and applicable regulations in 27 CFR Part 55.

MSHA inspectors will report to the local ATF office any situation involving explosives on mine property which poses an imminent threat to the public safety. Such action should be taken regardless of whether an ATF permittee or licensee is involved.

MSHA inspectors will inspect required records (e.g., transaction records, invoices, records of receipt and disposition, etc.) maintained at storage facilities of ATF licensees and permittees under their jurisdiction. Reports of theft will be examined as part of the verification of the storage facility transaction records.

b. Report of Violations

Compliance inspections will be reported to the ATF regional administrator on ATF F 5030.5, Report of Violations.

Where violations are corrected during the inspections, the MSHA inspector will so indicate and explain on ATF F 5030.5.

Where violations are not corrected during the inspection, the MSHA inspector will enter the corrective action to be taken and the proposed completion date in the space provided on ATF F 5030.5.

Where violations are not corrected during the inspection or there are violations that could affect public safety on mine property, the following guidelines shall apply:

- " If explosives are stored in violation of the regulations and the violation cannot be corrected immediately, allow the licensee a minimal time to comply. Use good judgement in deciding this time, considering all factors (e.g., dangerous combinations of explosive materials, possibility of accidental detonation, etc.), with the danger to the public safety being the prime consideration. Ten days might be a satisfactory time for correction in one instance, whereas 2 days may be too long in another.
- " It may be necessary to ask that the explosives be removed immediately if an extreme danger to the public safety exists because of the non-compliance. Uncorrected violations involving improperly stored explosives that may endanger the public safety will be immediately referred by telephone or in person to the MSHA district manager who, in turn, will promptly contact the appropriate ATF regional administrator.
- " Advise the licensee that failure to correct by the time specified may be cause to institute revocation action against the license or to deny the renewal application.
- " If reinspection shows correction has not been made, do not allow an extension for correction. Submit your report immediately, giving all pertinent facts, and recommend revocation or denial. ATF personnel may at this time consider criminal charges if explosives remain in storage, but this consideration must not delay submission of the inspection report.

" Where there are no violations disclosed during the inspection, the inspector will so indicate on the ATF F 5030.5.

Reports of violations or noncompliance will be reviewed by the ATF regional office. If further administrative or judicial action is needed, such action will be taken by ATF with the assistance of the MSHA inspector, where needed. The appropriate MSHA district manager should be kept informed of any action taken by ATF in this regard.

c. Variances

If, upon a compliance inspection, the surface storage facility does not meet or exceed the minimum standards as prescribed by subpart K of 27 CFR Part 55, but is constructed substantially equivalent to such standards, the licensee, permittee, or operator may on his own initiative or on the advice of the MSHA Inspector submit a letter requesting a variance, in duplicate, to the ATF regional administrator for approval. The request for a variance will be processed as follows:

" The permittee, licensee, or operator must submit a letter requesting a variance to the ATF regional administrator through the MSHA inspector, who will review it and make recommendations on a separate memorandum. The MSHA inspector will then promptly forward the letter request for variance and the recommendation to the MSHA district manager who will retain one copy of each document and transmit the remaining document to the ATF regional administrator.

" If the variance is approved, the ATF regional office will forward a copy of the variance approval to the MSHA district manager.

" If the variance is not approved, the ATF regional administrator or the director will state in a letter of disapproval to the permittee, licensee, or operator why the variance cannot be granted and what alternative, if any, would be acceptable. A copy of the letter of disapproval will be forwarded to the MSHA district manager.

" The ATF regional administrator will promptly forward to the appropriate MSHA

manager (via ATF F 5400.0) 2 copies of any request for variance under 27 CFR Part 55 received directly from the licensee, permittee, or operator subject to MSHA jurisdiction. The MSHA inspector will review the request and make recommendations on a separate memorandum, then route through appropriate channels. ATF will take appropriate approval/disapproval action.

9. Program in Accident Reduction (PAR)

a. Initial Contact

The district manager, or delegate, shall notify the operator of a mine that his mine has been tentatively selected for the Program in Accident Reduction and that a Part 50 Audit will be conducted in the near future to substantiate the selection of the mine. If possible this contact should be made in person, however, a letter to this effect may serve the same purpose.

b. Part 50 Audit

A Part 50 Audit will be conducted as soon as possible after the audit forms have been received from the Denver Safety and Health Technology Center (DSHTC). A copy of the audit should be forwarded to DSHTC and the Chief, Division of Safety, Arlington Office. All audits shall be completed within the first quarter of the fiscal year, unless circumstances prevent this and timely notification has been made to the Division of Safety outlining the reasons.

c. Verification

The district manager should, upon receipt of the verification of the audit, submit a letter to the mine operator verifying the selection of the operation for participation in the fiscal year program.

In the case of a questionable audit and the possible removal of a mine from the fiscal year program the district manager must submit a copy of the following to the Chief, Division of Safety:

- " the completed audit form;
- " any corrected 7000-1 and/or 7000-2 forms, to verify changes indicated in the audit

i.e., degree 3 injury to degree 6 or "overreported"; and

" a memorandum containing a request for the removal of the operation from the program, and any pertinent information to justify the request.

The program will be implemented at a selected operation at the beginning of the current fiscal year, and will continue through the 12 month time period.

An operation shall not be removed from the fiscal year program until authorization is received in writing from the Chief, Division of Safety.

d. MSHA Management Meeting

In order to achieve optimum coordination between PAR and other district objectives, an assessment should be made of the impact of this program on the activities being conducted. The district, subdistrict, assistant district manager(s), field supervisor(s) and the PAR coordinator should meet and discuss all of the pertinent information pertaining to the selected mine(s), and a time should be set for the PAR survey(s), and the program goals established to ensure there will not be conflicting MSHA activities at the mine.

e. Initial Meeting

The PAR team will meet with mine management and employees to explain the PAR concept and inspection procedures in addition to the salient points of PAR. For the purposes of establishing and promoting sound lines of information and communication, the area supervisor and the area inspector, if he is not a member of the PAR team, should be included at this meeting. At this time the operator should be made aware of the fact that normally citations will not be written, however, if an "imminent danger" should be observed, immediate action for correction will be required.

f. Coordination

MSHA activities will be coordinated by the area supervisor to avoid conflict between PAR and other area activities. Area inspectors and PAR team members should remain the same throughout the

fiscal year.

g. Interview

The PAR team will interview a representative number of management personnel and employees in all areas of the mine. These interviews should be conducted individually and privately to obtain an unbiased opinion of the safety and training programs conducted at the operation.

h. Evaluation

The PAR team will make an evaluation of the following:

- " Effectiveness of the Safety Policy and Program;
- " Effectiveness of the Training Policy and Program;
- " Personnel Communications;
- " Conditions and Practices;
- " General Attitudes and Behaviors; and
- " Analysis of the Interviews.

The area supervisor and area inspector should be consulted for their opinions of the mine management, employees, safety and general attitudes, and behavior of the mine personnel.

i. Post Conference

Schedule and meet with mine management and labor to discuss the analysis of the survey and any recommendations. (Do not distribute hand written notes at this conference).

j. Initial Survey Report

Prepare the initial survey report, with all of the PAR team members present. Do not include any items in the report that were not previously discussed with mine management and labor. This report should be approved by the area supervisor. If the area supervisor is not available, do not hold up the report, but leave a rough draft copy for his review and comments. Submit the final draft copy to the district office for approval and distribution.

k. Monthly Follow-Up Procedures

PAR team members will conduct a monthly follow-up visit for the following purposes:

- " investigate recent accidents, incidents and illnesses. Evaluate and verify all Part 50 reports submitted since the previous PAR visit;
- " review progress on each prior recommendation;
- " update statistics;
- " tour the operation and communicate with management and labor to determine problem areas and find solutions; and
- " evaluate overall PAR progress and submit additional recommendations, if necessary.

l. Close-out Discussion

A close-out discussion should be held with labor and management, jointly or separately, to inform them of the progress made and the problem areas observed during the visit.

m. Reports

The following reports should be maintained and forwarded to the district and the Chief, Division of Safety, Arlington, Virginia:

(1) Part 50 Audit

- " determine correctness and the evaluation of the hazardous areas of the mine; also a brief analysis of injuries and the trends during the past year.

(2) Summary Report (Quarterly):

- " an evaluation of the safety program (if any);
- " a determination of the hazards in job performance and proceedings;
- " the results of the consultation with labor and management and the requirements needed of other program areas of MSHA;
- " the general attitude of the company

toward the program;

- " any accident prevention, safety awareness, or similar training or program discussed and the interest indicated by the company;
- " a brief outline of the Program in Accident Reduction you anticipate developing at the mine;
- " any information you believe to be significant to future PAR activities at the operation;
- " a copy of the updated T-23 Degree 2-5 lost work day injury form;
- " a copy of the updated comparison report; and
- " a copy of the updated MSHA manhour report.

IV. **INSPECTION/INVESTIGATION REPORTS**

A report shall be issued with reasonable promptness after an inspection or investigation is completed. Black ink pens shall be used for all handwritten documents pertaining to an inspection. When the necessary forms and information have been completed the report shall be given to the inspector's immediate supervisor for review and comment before being forwarded for typing and distribution. Examples and instructions for completion of necessary MIS forms are included in the Field Reports Procedures Handbook.

The inspector/investigator is responsible for the prompt preparation of all reports and the accuracy of all documents contained therein.

V. **REGULATIONS**

A. **Part 40 Representative of Miners**

Section 103(f) of the Act provides the authority that a representative of the operator and a representative authorized by the miners shall be given an opportunity to accompany the inspector during the physical inspection of a metal or nonmetal mine. If a person or organization appears to qualify as a miner's representative but has not filed appropriate Part 40 information, the inspector should advise the person or group of Part 40's existence and procedures. Such a group may be a representative of miners even if it has not met Part 40 procedures. Where there is

no authorized miners representative, the inspector shall consult with a reasonable number of miners concerning matters of health and safety in such mine.

The inspector's obligation under this part is to determine that the operator understands Part 40 and will permit an authorized representative of the miners to participate in the inspection, if there is a representative. The inspector must also determine that a copy of the information provided the operator pursuant to 40.3 of this part is posted on the mine bulletin board and maintained in a current status.

The operator does not participate in determining qualifications for a representative of miners nor in the selection process.

If the operator refuses to permit a representative of the miners to participate in the inspection, a 104(a) citation listing a violation of Section 103(f) of the Act shall be issued.

B. Part 41 Notification of Legal Identity

Section 109(d) of the Act provides the authority for Notification of Legal Identity.

This part provides procedures requiring an operator to file a Legal Identity Report on Form 2000-7.

It is the inspector's responsibility to see that a Legal Identity Report is filed and that it is complete and up-to-date. Assuming that a report has been filed, the MSHA copy is maintained in the official mine file in the district office. A copy can be made available to field offices.

Failure of the operator to notify the Mine Safety and Health Administration, in writing, of the legal identity of the operator or any changes thereof within the time required under this part will be considered to be a violation of Section 109(d) of the Act and shall be cited by the inspector.

For additional policy regarding Part 41, refer to Volume III of the Program Policy Manual.

C. Part 43 Procedures for Processing Hazardous Conditions Complaints

Authority: Sections 103(g) and 508 of the Act.

1. This part provides procedures to handle Hazardous Conditions Complaints when a complaint is made by a representative of miners or by a miner where there is no such representative. The inspector's obligation under this part is on receipt of a notice of alleged violation or imminent danger to make a special inspection as soon as possible.

Refer to Volume III of the Program Policy Manual and the

Special Inspections portion of this handbook for specific policy and procedural instructions.

2. Code-A-Phone Messages

The following procedures are to be used for Code-a-Phone messages.

- a. Each workday a Coal, Division of Safety, designated staff member will check the message center for incoming messages. Each message will be numbered, logged into the program tracking system and recorded on a master cassette. All messages will be reviewed by a Coal, Division of Safety, staff member who is knowledgeable in mining matters to make a determination regarding the urgency of the message.
- b. Code-a-Phone messages that mention the words "methane," "gas," or "percent of," or describe any situation which may be an imminent danger, such as adverse roof conditions, will be immediately brought to the attention of the Coal or Metal and Nonmetal Chief, Division of Safety. The appropriate District Manager will be notified by telephone to expedite an inspection or investigation. Other special messages will be brought to the attention of the appropriate Coal or Metal and Nonmetal Chief, Division of Safety.
- c. All messages will be transcribed by the Coal designated staff member. The identification of the caller will be omitted from the transcribed message to ensure that the person's confidentiality is maintained, unless it is necessary for the Agency to reestablish contact.
- d. Transcribed messages that relate to noncoal matters will be referred to the Metal and Nonmetal Chief, Division of Safety, who will ensure that the messages are coordinated and telefaxed to the appropriate MNMS&H District Office.
- e. A record of all Code-a-Phone notifications and investigation reports will be kept on file in the Division of Safety by a designated staff member.
- f. District Code-a-Phone investigation reports must be:
 - provided to the Chief, Division of Safety, within 30 days following receipt of the telefaxed Code-a-Phone message; and
 - reviewed by the designated staff member within 15 days after receipt of the investigation report. Any discrepancies or questions regarding the report will be discussed with the Chief, Division of Safety.

- g. The designated staff member will:
- enter the pertinent information from the District investigation reports into the program tracking system and file each report; and
 - submit to the Chief, Division of Safety, a quarterly report and an annual report of these investigations. The annual report, which covers the preceding calendar year, will be submitted with the first quarterly report each year.

D. Part 44 Rules of Practice for Petitions for Modification of Mandatory Safety Standards

Authority for Part 44 is provided by Sections 101 and 508 of the Act. Refer to the Petitions for Modification portion of this handbook for procedural instructions.

E. Part 45 Independent Contractors

Authority for this part is provided by Sections 3(d) and 508 of the Act.

This part provides information requirements and procedures for independent contractors to obtain a MSHA ID number and procedures for service of documents upon independent contractors. Production operators are required to maintain certain information for each independent contractor at the mine. The purpose of this rule is to facilitate implementation of MSHA's enforcement policy of holding independent contractors responsible for violations committed by them and their employees.

MSHA's policy is to issue citations and, where appropriate, orders to independent contractors for violations of applicable provisions of the Act, standards or regulations. This policy is based on the Mine Act's definition of an "operator," which includes "independent contractors performing services or construction at mines.

MSHA's enforcement policy regarding independent contractors does not change production operators' basic compliance responsibilities. Production operators are subject to all provisions of the Act, and to all standards and regulations applicable to their mining operations. This overall compliance responsibility includes assuring compliance by independent contractors with the Act and with applicable standards and regulations. As a result, both independent contractors and production operators are responsible for compliance with all applicable provisions of the Act, standards and regulations.

This "overlapping" compliance responsibility means that there may be circumstances in which it is appropriate to issue citations or orders to both the independent contractor and to the production operator for a violation. Enforcement action against a production operator for a violation(s) involving an independent contractor is normally appropriate in any of the following situations: (1) when

the production operator has contributed by either an act or by an omission to the occurrence of a violation in the course of an independent contractor's work; (2) when the production operator has contributed by either an act or omission to the continued existence of a violation committed by an independent contractor; (3) when the production operator's miners are exposed to the hazard; or (4) when the production operator has control over the condition that needs abatement. In addition, the production operator may be required to assure continued compliance with standards and regulations applicable to an independent contractor at the mine.

Inspectors should cite independent contractors for violations committed by the contractor or by their employees. Whether particular provisions apply to independent contractors or to the work they are performing will be apparent in most instances. However, some provisions of the Act, standards or regulations may not be directly applicable to independent contractors or their work; or independent contractor compliance with certain standards or regulations may duplicate the production operator's compliance efforts. As questions regarding such matters arise, the inspector's supervisor shall contact the district manager, who shall consult with the Administrator's Office.

1. Definition of Independent Contractor

The Mine Act defines an independent contractor as "any person, partnership, corporation, subsidiary of a corporation, firm, association or other organization that contracts to perform services or construction at a mine. "If the "person, partnership, ... or other organization" contracts for the production of a mineral, the "person, partnership, ... or other organization" is classified as a mine operator, and it is required to file a Legal Identity Report. In addition, it will be assigned a mine identification number, and it is subject to all requirements applicable to a mine operator.

2. MSHA Identification of Independent Contractors

Any independent contractor that requests an identification number will receive one from MSHA. However, unless cited for a violation, only those independent contractors performing work at mine sites, or with contracts to perform at a mine(s) any of the nine types of services or construction listed below, are required by MSHA to have identification numbers:

- a. mine development, including shaft and slope sinking;
- b. construction or reconstruction of mine facilities including building or rebuilding preparation plants and mining equipment, and building additions to existing facilities;
- c. demolition of mine facilities;

- d. construction of dams;
- e. excavation or earthmoving activities involving mobile equipment;
- f. equipment installation, such as crushers and mills;
- g. equipment service or repair of equipment on mine property for a period exceeding 5 consecutive days at a particular mine;
- h. material handling within mine property; including haulage of coal, ore, refuse, etc., unless for the sole purpose of direct removal from or delivery to mine property; and
- i. drilling and blasting.

MSHA does not require independent contractors to have identification numbers as a precondition to bidding for work contracts on mine property. If an independent contractor becomes a successful bidder and if the contract to be performed covers any of the nine types of service or construction listed above, the contractor must obtain an identification number.

MSHA identification numbers have no effect on the compliance responsibility of either the mine operator or the independent contractor. Mine operators have compliance responsibility for all activities at the mine, regardless of whether or not the independent contractor in question has an MSHA identification number. The mine operator's overall compliance responsibility includes assuring each independent contractor's compliance with the Act and with MSHA's standards and regulations. Independent contractors are responsible for compliance with applicable provisions of the Act, standards and regulations, regardless of whether or not they have an MSHA identification number.

Whenever an independent contractor submits a written request for an identification number, the contractor must furnish the information listed under 30 CFR 45.3(a). If an independent contractor cited for a violation does not have an MSHA identification number, the inspector should obtain the information required by 30 CFR 45.3(a) from the independent contractor. Information required under 30 CFR 45.3(a)(1),(2) and (3) may also be obtained from the production operator (see 30 CFR 45.4(b)).

Each independent contractor who has an identification number uses it on all job sites. In the event of a change in ownership (but same trade name), a new identification number should be assigned.

3. Independent Contractor Register

30 CFR 45.4(a) requires independent contractors to provide production operators with minimal information necessary to the conduct of an MSHA inspection. 30 CFR 45.4(b) requires production operators to maintain this information in written form at the mine, and to make the information available to an inspector upon request.

In order to accomplish this purpose, both the independent contractor and the production operator have responsibilities under Section 45.4(a). In the event that an independent contractor refuses to provide the production operator with the necessary information, the contractor is subject to citation for failure to comply with Section 45.4(a). In addition, if a production operator refuses to make the necessary information available to the inspector, he/she is subject to citation for violation of Section 45.4(b).

However, there may be instances where the information required by Section 45.4 is not immediately available due to an inadvertent omission which is quickly corrected. For example, where contracts are kept at the mine's central or headquarters office, and a particular independent contractor has begun work on the mine property without the knowledge of the local mine, the inspector should consider all factors relevant to the particular case. If the necessary information can be secured in a reasonable time, nonviolation for failure to keep an accurate register should be found to exist.

In all cases, it should be kept in mind that Section 45.4 is intended to give the inspector sufficient information so that a fair and efficient inspection can be made. If that information is made promptly available to the inspector so that this goal can be accomplished, then there is no violation of Section 45.4.

Refer to Volume III of the Program Policy Manual for guidelines which cover the responsibility of independent contractors for compliance with 30 CFR Parts 41, 48 and 50.

F. Part 48 Training and Retraining of Miners

Section 115 of the Act and 30 CFR Part 48 require operators and/or contractors to submit and obtain approval of training plans under which miners are provided training. The training required by these plans must be provided to miners before they begin work at a mine, or before they receive new work tasks or assignments. Accordingly, when a miner is hired, transferred to a new work location, or is recalled, the miner must be given the minimum training specified by Part 48.

Refer to Volume III of the Program Policy Manual for specific training policy.

G. **Part 49 Mine Rescue Teams**

This rule requires the availability of mine rescue teams for all underground mines in the event of an emergency and is promulgated under the authority of Sections 101 and 115(e) of the Act. Part 49 establishes minimum requirements for mine rescue teams in the following areas: team size and availability; rescue equipment, storage and maintenance; rescue notification plans; and team member experience, health and training. The regulations also provide for alternative mine rescue capability for mines which are "small and remote" or those which have "special mining conditions."

Refer to Volume III of the Program Policy Manual for specific policy regarding Part 49.

H. **Part 50 Accidents, Injuries, Illnesses, Employment, and Coal Production in Mines**

1. **Citations for Failure to Report Under Part 50**

An evaluation of operator compliance with reporting requirements under Part 50 shall be made at every regular inspection.

To ensure that the issuance and assessment of citations for failure to report as required by Part 50 is handled uniformly, inspectors are to issue a citation for each separate instance of a failure to report an accident, injury or illness, and quarterly employment. Each citation will be subject to a separate penalty.

In addition, all such citations shall be reviewed to determine if a special assessment is warranted. The purpose of the review is to determine if the violation involves a high degree of negligence or other unique aggravating circumstances.

Inspection personnel should carefully review the degree of negligence associated with all Part 50 citations. Failure to report any accident, injury, illness, or work hours as required by the regulation, should be considered highly negligent, absent clear, mitigating circumstances. Any violation of Part 50 considered to be the result of a high degree of negligence shall be referred for special assessment.

Where circumstances indicate that there has been flagrant conduct surrounding a failure to report, such as attempting to conceal the fact that an injury occurred, serious consideration should be given to a reckless disregard negligence evaluation. The facts involved in such a violation should be carefully documented and transmitted to the MSHA Assessment Office for use in determining an appropriate level of special assessment.

2. 30 CFR Part 50 Audit Program

The District Manager shall be responsible for the Part 50 audit program. Audits will be conducted under the inspection and investigation authority of Section 103 of the Mine Act and 30 CFR Part 50. Audits shall be conducted when necessary as determined by the District Manager. To accomplish these audits, auditors shall review and document information related to accidents, injuries and occupational illnesses. They will also review the quarterly employment and coal production reports, which MSHA considers relevant and necessary to determine compliance with the reporting requirements. The auditors will be authorized representatives selected by the District Manager and should have a thorough understanding of Part 50 and audit procedures.

Responsibilities

The District Manager will:

- a. Direct the audit program and provide the appropriate Administrator with a report on the audit results.
- b. Initiate a Part 50 audit whenever circumstances indicate that it is appropriate. In all instances, however, a Part 50 audit will be required at mines at which a chargeable fatality occurred and at mines selected as Sentinels of Safety Award candidates.
- c. Ensure that appropriate enforcement action is taken when required by audit results.
- d. Provide applicable data and guidance to the auditors.
- e. Furnish to the auditors documentation that establishes MSHA policy or procedures concerning 30 CFR Part 50 and the audit program.

The Auditors will:

- a. Request an audit package for the mine. There are two alternate methods for this:
 - (1) A computer software package is available that allows the audit forms to be retrieved via personal computer. The necessary software may be obtained by contacting the Chief, Mining Information Systems Division, at the Denver Safety and Health Technology Center (DSHTC), (303) 231-5445. This program allows the required forms to be generated locally at the time they are needed.
 - (2) Alternatively, the computer-generated audit forms can be obtained from the DSHTC. The forms that

cover the preceding 3 years must be requested at least 2 weeks prior to conducting the audit.

- b. Coordinate the audit with the inspector conducting the regular inspection at the mine being audited.
- c. Keep the District Manager informed of all changes in plans, schedules, and problems that arise during each audit, and any other factors that could affect the progress of the audit.
- d. Have some latitude in determining how the audit will be conducted (e.g., number of days, and scope of review).

Structuring and Conducting the Audit

- a. Data collection, data analysis and audit review shall be as consistent as possible so that a National analysis can be based on the same type of data.
- b. The purpose of data collection in these audits allows auditors to check, to the extent possible, all data necessary to determine operator compliance with Part 50. The auditors will review records and conduct interviews, as well as observe mine operator procedures and practices.

In all instances, MSHA Form 7000-1, MSHA Form 7000-2, and the mine operator accident investigation report (where applicable) must be compared against the employment, hours worked, and injury and occupational illness data obtained from DSHTC. Operators who refuse access to such records will be cited.

In addition, auditors should verify compliance by using other data sources. Such sources may include miners' representative and employee interviews, and examination of other available records including state workers' compensation records.

- c. Personal information collected in an audit shall be protected from public disclosure under the Freedom of Information Act 5 U.S.C. 552 and the Privacy Act 5 U.S.C. 552a, as applicable.

Preparation and Distribution of Audit Results

The preparation of audit results and findings will include input and cooperation from all audit members. The auditors will furnish a copy of audit results to the District Manager. A review and discussion will be held if necessary. A copy of the audit results will be filed with background data and relevant documentation on the audit.

The District Manager will send a copy of the completed audit to the Mining Information Systems Division Chief at DSHTC.

3. Part 50 Audit After Fatal Accident

A Part 50 reporting audit shall be conducted at a mine where a fatal accident occurs. Upon notification of a fatal accident, the Mining Information Systems Division of DSHTC will assemble and send to the appropriate district, assistant district or subdistrict manager the forms and instructions for conducting the Part 50 audit. A mine which has been audited within a year preceding a fatal accident need not be audited again, unless the district manager or the Administrator determines otherwise. For additional Part 50 audit instructions and guidelines, refer to the Program Policy Manual.

4. Part 50 Notification, Investigation, Reporting and Recordkeeping Requirements for Independent Contractors

Independent contractors who are performing any of the nine types of services or construction listed under Section 45.3, Part 45 of Volume III of the Program Policy Manual, must report accidents, injuries and illnesses under 30 CFR 50.20. In addition, these independent contractors must maintain records of such reports under 30 CFR 50.40; and they must file quarterly employment reports under 30 CFR 50.30. Except as otherwise determined by the district manager, other independent contractors are not required to comply with the above referenced regulatory sections.

Without regard to the type of work being performed, all independent contractors are required to comply with the notification, investigation and preservation of evidence requirements of 30 CFR Section 50.10, 50.11 and 50.12 respectively, and they are required to comply with 30 CFR 50.41 regarding verification of reports.

To minimize the burden of quarterly employment reporting, for those contractors required to do so, only a single MSHA Form 7000-2 must be completed and filed for any calendar quarter in which a contractor has worked. Only the types of work listed under "Part 45 Independent Contractors" of this Manual need to be reported.

As in the case of mine production operators, the information necessary to complete a Form 7000-2 by an independent contractor is the average number of employees and the total employee hours involved in the work being reported. However, this employment information must be developed separately for the surface mines and for the underground mines where the work being reported was performed.

In addition, in order to ensure compatibility of MSHA statistics, separate 7000-2 forms are to be used for work

performed at metal and nonmetal mines and at coal mines. For work performed at underground mines, this information must be separated for work performed underground and for work performed on the surface of underground mines, and then entered on the appropriate line. For work performed at surface mines, employment information must be separated for the several types of surface mines indicated on the form (e.g., strip, open pit or quarry, auger mine, dredge, etc.), and then entered on the appropriate line. When work being reported on any particular line was performed at more than one site, the required employment information should be computed together.

The independent contractor and the production operator may coordinate the submission of their quarterly reports so that the production operator actually submits the report covering the contractor. When this is done, a separate Form 7000-2 must be filed for the operator and for each independent contractor. It should also be remembered that the independent contractor is individually responsible for complying with 30 CFR 50.30. Consequently, if the production operator fails to submit the separate quarterly employment report covering the independent contractor, that contractor may be cited for a violation of its compliance responsibility.