

# MSHA Compliance Guide for Tree Cutting Activities

April 2005



## Tree Cutting On Mine Property Compliance Assistance Faq's

### *Jurisdiction*

#### **1. Q. What is MSHA's jurisdiction over tree cutting?**

**A.** MSHA has jurisdiction, and the full range of training may apply, if the answers to the following two questions are "yes":

1. Is the tree cutting on mine property?
2. Is the tree cutting associated with mining, i.e., a precursor to mining or done for mining purposes?

This excludes, for example, tree harvesting not associated with mining.

#### **2. Q. What about tree cutting that is on mine property but is not associated with mining?**

**A.** Those tree cutters will receive hazard training (Part 48 or Part 46) consistent with their exposure to any mining hazards, such as on haul roads.

#### **3. Q. What about tree cutting that is associated with mining, but is not on mine property?**

**A.** Ordinarily, MSHA will not inspect these activities. Questions may be referred to the District offices, the Division of Coal Mine Safety, or the Division of Metal and Nonmetal Mine Safety at MSHA Headquarters.

### *Training*

#### **4. Q. What is the status of tree cutters and tree cutting?**

**A.** Tree cutters are surface "miners," and tree cutting is mine service work. Typically, tree cutting is performed by contractors, but regular mine employees may be assigned tree cutting tasks.

#### **5. Q. What is the legal basis for that status?**

**A.** The Federal Mine Safety and Health Act (Mine Act) defines "miner" to mean any person working in a mine (Section 3(g)), and "mine" to include an area of land used in or to be used in mining (Section 3(h)(1)).

#### **6. Q. What training must contractor tree cutters complete?**

**A.** If the tree cutters are on the mine property for more than 5 consecutive days, or have a pattern of recurring exposure, they must complete comprehensive training under Part 48 (Subpart B) or Part 46, 30 CFR: new miner, experienced miner, task and annual refresher training, as applicable. If the tree cutters are on the mine property for 5 days or less, they must complete hazard training.

**7. Q. What about other miners?**

**A.** The training for mine employees may need to be supplemented, such as in task training and annual refresher training, to cover tree cutting.

**8. Q. What about course content and training focus for tree cutting?**

**A.** Training must be adapted to tree cutting, as appropriate. Most injuries and fatalities involving tree cutters at mines have been due to hazards of the tree cutting itself. The content should focus on tree cutting hazards and safe work procedures such as preoperational checks, workplace exams, communications and proper tree cutting and limbing. Tree cutters also must be trained in any other mining facets of which they are a part and mining hazards to which they are exposed.

**9. Q. Can tree cutting training taken under another program be credited toward meeting the MSHA training requirements, particularly for new miners under 46.5 or 48.25?**

**A.** Yes, current and equivalent Occupational Safety and Health Administration (OSHA) or State training, such as West Virginia's 16 hour training, will be credited.

**10. Q. What are the administrative requirements for the training plans?**

**A.** The administrative requirements are the same as for all plans under either Part 48 or Part 46. Under Part 48, for example, plans must be submitted for MSHA approval and courses taught by MSHA approved instructors.

**11. Q. How may Part 48 approved instructors be obtained?**

**A.** There are three sources for approved instructors: operators' or contractors' staffs, state grantees, and private vendors. Per 48.23(h), instructors are approved in a number of ways. Individuals may apply based on their specialty and background, which could include tree cutting.

**12. Q. Is training assistance available from MSHA?**

**A.** Yes. MSHA, for example, has developed a template training plan as a guide for covering tree cutting performed by contractors. Further assistance in developing and implementing training can be obtained through MSHA's Educational Field Services (EFS): Contact EFS East at 1-800-678-6746, and EFS West at 1-800-579-2647.

***Enforcement***

**13. Q. Who is responsible for the training?**

**A.** The same MSHA enforcement policy for training in other instances applies in regard to tree cutting.

**14. Q. How long will existing operations have to come up with a training plan or amendment and when does MSHA enforcement of the plans begin?**

**A.** Existing operations where tree cutting under MSHA jurisdiction occurs will have a reasonable amount of time to come into compliance and have provisions covering tree cutting incorporated in an approved training plan. MSHA accordingly will enforce the training requirements regarding tree cutters beginning June 30, 2005.

**15. Q. What are the Legal ID and notice requirements for tree cutting contractors?**

**A.** The same as for other mine contractors per Part 45, 30 CFR, and existing MSHA enforcement policy.

**16. Q. Should tree cutting be included as part of a required ground control plan?**

**A.** No, tree cutting as such is not a component of ground control, which serves to stabilize mining features such as highwalls, pits, spoil banks, and benches.

**17. Q. When will MSHA commence inspection of tree cutting that is in advance of any mining and under MSHA's jurisdiction?**

**A.** Once MSHA is aware of the tree cutting; MSHA will inspect and assure training is provided as appropriate.

**18. Q. Generally, what is the scope of MSHA's inspection of tree cutting?**

**A.** The inspection should take into account the developmental nature of the activity. The purpose is to check that the tree cutters have completed training as required. Compliance with other appropriate MSHA requirements should be checked such as PPE, noise, communications and guarding. Where MSHA has no standards specifically addressing tree cutting methods or techniques, MSHA will rely on training to cover acceptable safe practices, unless an imminent danger is present.

**19. Q. What action should an inspector take in situations where there is no imminent danger and no specific MSHA regulation to enforce?**

**A.** The inspector should inform the tree cutter of the unsafe acts and/or conditions and check to make sure the circumstances are covered in the training.

**20. Q. Will MSHA enforce OSHA's tree cutting standards?**

**A.** No, MSHA will only enforce MSHA regulations. OSHA standards cannot be incorporated by reference. OSHA standards, however, can be used as a guide in determining safe work practices and procedures for tree cutters.

MSHA-required training for tree cutters can be so guided by OSHA material.