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SUBCHAPTER H—EDUCATION AND TRAINING

PART 46—TRAINING AND RETRAINING OF MINERS ENGAGED IN SHELL DREDGING OR EMPLOYED AT SAND, GRAVEL, SURFACE STONE, SURFACE CLAY, COLLOIDAL PHOSPHATE, OR SURFACE LIMESTONE MINES.

- Sec.
- 46.1 Scope.
 - 46.2 Definitions.
 - 46.3 Training plans.
 - 46.4 Training plan implementation.
 - 46.5 New miner training.
 - 46.6 Newly hired experienced miner training.
 - 46.7 New task training.
 - 46.8 Annual refresher training.
 - 46.9 Records of training.
 - 46.10 Compensation for training.
 - 46.11 Site-specific hazard awareness training.
 - 46.12 Responsibility for independent contractor training.

AUTHORITY: 30 U.S.C. 811, 825.

SOURCE: 64 FR 53130, Sept. 30, 1999, unless otherwise noted.

§ 46.1 Scope.

The provisions of this part set forth the mandatory requirements for training and retraining miners and other persons at shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, and surface limestone mines.

§ 46.2 Definitions.

The following definitions apply in this part:

(a) *Act* means the Federal Mine Safety and Health Act of 1977.

(b) *Competent person* means a person designated by the production-operator or independent contractor who has the ability, training, knowledge, or experience to provide training to miners in his or her area of expertise. The competent person must be able both to effectively communicate the training subject to miners and to evaluate whether the training given to miners is effective.

(c) *Equivalent experience* means work experience where the person performed duties similar to duties performed in

mining operations at surface mines. Such experience may include, but is not limited to, work as a heavy equipment operator, truck driver, skilled craftsman, or plant operator.

(d)(1) *Experienced miner* means:

(i) A person who is employed as a miner on April 14, 1999;

(ii) A person who has at least 12 months of cumulative surface mining or equivalent experience on or before October 2, 2000;

(iii) A person who began employment as a miner after April 14, 1999, but before October 2, 2000 and who has received new miner training under § 48.25 of this title or under proposed requirements published April 14, 1999, which are available from the Office of Standards, Regulations and Variances, MSHA, 1100 Wilson Blvd., Room 2352, Arlington, Virginia 22209-3939; or

(iv) A person employed as a miner on or after October 2, 2000 who has completed 24 hours of new miner training under § 46.5 of this part or under § 48.25 of this title and who has at least 12 cumulative months of surface mining or equivalent experience.

(2) Once a miner is an experienced miner under this section, the miner will retain that status permanently.

(e) *Independent contractor* means any person, partnership, corporation, subsidiary of a corporation, firm, association, or other organization that contracts to perform services at a mine under this part.

(f) *Mine site* means an area of the mine where mining operations occur.

(g)(1) *Miner* means:

(i) Any person, including any operator or supervisor, who works at a mine and who is engaged in mining operations. This definition includes independent contractors and employees of independent contractors who are engaged in mining operations; and

(ii) Any construction worker who is exposed to hazards of mining operations.

(2) The definition of “miner” does not include scientific workers; delivery workers; customers (including commercial over-the-road truck drivers); vendors; or visitors. This definition

§ 46.3

30 CFR Ch. I (7-1-13 Edition)

also does not include maintenance or service workers who do not work at a mine site for frequent or extended periods.

(h) *Mining operations* means mine development, drilling, blasting, extraction, milling, crushing, screening, or sizing of minerals at a mine; maintenance and repair of mining equipment; and associated haulage of materials within the mine from these activities.

(i) *New miner* means a person who is beginning employment as a miner with a production-operator or independent contractor and who is not an experienced miner.

(j) *Newly hired experienced miner* means an experienced miner who is beginning employment with a production-operator or independent contractor. Experienced miners who move from one mine to another, such as drillers and blasters, but who remain employed by the same production-operator or independent contractor are not considered newly hired experienced miners.

(k) *Normal working hours* means a period of time during which a miner is otherwise scheduled to work, including the sixth or seventh working day if such a work schedule has been established for a sufficient period of time to be accepted as the common practice of the production-operator or independent contractor, as applicable.

(l) *Operator* means any production-operator, or any independent contractor whose employees perform services at a mine.

(m) *Production-operator* means any owner, lessee, or other person who operates, controls, or supervises a mine under this part.

(n) *Task* means a work assignment or component of a job that requires specific job knowledge or experience.

(o) *We* or *us* means the Mine Safety and Health Administration (MSHA).

(p) *You* means production-operators and independent contractors.

[64 FR 53130, Sept. 30, 1999, as amended at 67 FR 38384, June 4, 2002]

§ 46.3 Training plans.

(a) You must develop and implement a written plan, approved by us under either paragraph (b) or (c) of this section, that contains effective programs

for training new miners and newly hired experienced miners, training miners for new tasks, annual refresher training, and site-specific hazard awareness training.

(b) A training plan is considered approved by us if it contains, at a minimum, the following information:

(1) The name of the production-operator or independent contractor, mine name(s), and MSHA mine identification number(s) or independent contractor identification number(s);

(2) The name and position of the person designated by you who is responsible for the health and safety training at the mine. This person may be the production-operator or independent contractor;

(3) A general description of the teaching methods and the course materials that are to be used in the training program, including the subject areas to be covered and the approximate time or range of time to be spent on each subject area.

(4) A list of the persons and/or organizations who will provide the training, and the subject areas in which each person and/or organization is competent to instruct; and

(5) The evaluation procedures used to determine the effectiveness of training.

(c) A plan that does not include the minimum information specified in paragraphs (b)(1) through (b)(5) of this section must be submitted to and approved by the Regional Manager, Educational Field Services Division, or designee, for the region in which the mine is located. You also may voluntarily submit a plan for Regional Manager approval. You must notify miners or their representatives when you submit a plan for Regional Manager approval. Within two weeks of receipt or posting of the plan, miners and their representatives may also request review and approval of the plan by the Regional Manager and must notify the production-operator or independent contractor of such request.

(d) You must provide the miners' representative, if any, with a copy of the plan at least 2 weeks before the plan is implemented or, if you request MSHA approval of your plan, at least two weeks before you submit the plan to the Regional Manager for approval. At

Mine Safety and Health Admin., Labor

§ 46.4

mines where no miners' representative has been designated, you must post a copy of the plan at the mine or provide a copy to each miner at least 2 weeks before you implement the plan or submit it to the Regional Manager for approval.

(e) Within 2 weeks following the receipt or posting of the training plan under paragraph (d) of this section, miners or their representatives may submit written comments on the plan to you, or to the Regional Manager, as appropriate.

(f) The Regional Manager must notify you and miners or their representatives in writing of the approval, or status of the approval, of the training plan within 30 calendar days of the date we received the training plan for approval, or within 30 calendar days of the date we received the request by a miner or miners' representative that we approve your plan.

(g) You must provide the miners' representative, if any, with a copy of the approved plan within one week after approval. At mines where no miners' representative has been designated, you must post a copy of the plan at the mine or provide a copy to each miner within one week after approval.

(h) If you, miners, or miners' representatives wish to appeal a decision of the Regional Manager, you must send the appeal, in writing, to the Director for Educational Policy and Development, MSHA, 1100 Wilson Blvd., Room 2100, Arlington, Virginia 22209-3939, within 30 calendar days after notification of the Regional Manager's decision. The Director will issue a final decision of the Agency within 30 calendar days after receipt of the appeal.

(i) You must make available at the mine a copy of the current training plan for inspection by us and for examination by miners and their representatives. If the training plan is not maintained at the mine, you must have the capability to provide the plan within one business day upon request by us, miners, or their representatives.

(j) You must comply with the procedures for plan approval under this section whenever the plan undergoes revisions.

(k) The addresses for the EFS Regional Managers are as follows. Cur-

rent information on the EFS organization is available on MSHA's Internet Home Page at <http://www.msha.gov>.

Eastern Regional Manager

Educational Field Services, National Mine Health and Safety Academy, 1301 Airport Road, Beaver, WV 25813-9426, Telephone: (304) 256-3223, FAX: (304) 256-3319, E-mail: EFS_EAST@MSHA.GOV

Western Regional Manager

Educational Field Services, P.O. Box 25367, Denver, CO 80225-0367, Telephone: (303) 231-5434, FAX: (304) 231-5474, E-mail: EFS_WEST@MSHA.GOV

[64 FR 53130, Sept. 30, 1999, as amended at 67 FR 38384, June 4, 2002]

§ 46.4 Training plan implementation.

(a) You must ensure that each program, course of instruction, or training session is:

- (1) Conducted in accordance with the written training plan;
- (2) Presented by a competent person; and
- (3) Presented in language understood by the miners who are receiving the training.

(b) You may conduct your own training programs or may arrange for training to be conducted by: state or federal agencies; associations of production operators or independent contractors; miners' representatives; consultants; manufacturers' representatives; private associations; educational institutions; or other training providers.

(c) You may substitute, as applicable, health and safety training required by the Occupational Safety and Health Administration (OSHA), or other federal or state agencies to meet requirements under this part. This training must be relevant to training subjects required in this part. You must document the training in accordance with § 46.9 of this part.

(d) Training methods may consist of classroom instruction, instruction at the mine, interactive computer-based instruction or other innovative training methods, alternative training technologies, or any combination of training methods.

(e) Employee health and safety meetings, including informal health and safety talks and instruction, may be credited under this part toward either

§ 46.5

30 CFR Ch. I (7–1–13 Edition)

new miner training, newly hired experienced miner training, or annual refresher training requirements, as appropriate, provided that you document each training session in accordance with § 46.9 of this part. In recording the duration of training, you must include only the portion of the session actually spent in training.

§ 46.5 New miner training.

(a) Except as provided in paragraphs (f) and (g) of this section, you must provide each new miner with no less than 24 hours of training as prescribed by paragraphs (b), (c), and (d). Miners who have not yet received the full 24 hours of new miner training must work where an experienced miner can observe that the new miner is performing his or her work in a safe and healthful manner.

<p>(b) Before a new miner begins work at the mine—</p>	<p>You must provide the miner with no less than 4 hours of training in the following subjects, which must also address site-specific hazards:</p> <ol style="list-style-type: none"> (1) An introduction to the work environment, including a visit and tour of the mine, or portions of the mine that are representative of the entire mine (walkaround training). The method of mining or operation utilized must be explained and observed; (2) Instruction on the recognition and avoidance of electrical hazards and other hazards present at the mine, such as traffic patterns and control, mobile equipment (e.g., haul trucks and front-end loaders), and loose or unstable ground conditions; (3) A review of the emergency medical procedures, escape and emergency evacuation plans, in effect at the mine, and instruction on the firewarning signals and firefighting procedures; (4) Instruction on the health and safety aspects of the tasks to be assigned, including the safe work procedures of such tasks, the mandatory health and safety standards pertinent to such tasks, information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program; (5) Instruction on the statutory rights of miners and their representatives under the Act; (6) A review and description of the line of authority of supervisors and miners' representatives and the responsibilities of such supervisors and miners' representatives; and (7) An introduction to your rules and procedures for reporting hazards.
<p>(c) No later than 60 calendar days after a new miner begins work at the mine—</p>	<p>You must provide the miner with training in the following subject:</p> <ol style="list-style-type: none"> (1) Instruction and demonstration on the use, care, and maintenance of self-rescue and respiratory devices, if used at the mine; and (2) A review of first aid methods.
<p>(d) No later than 90 calendar days after a new miner begins work at the mine—</p>	<p>You must provide the miner with the balance, if any, of the 24 hours of training on any other subjects that promote occupational health and safety for miners at the mine.</p>

(e) Practice under the close observation of a competent person may be used to fulfill the requirement for training

on the health and safety aspects of an assigned task in paragraph (b)(4) of this section, if hazard recognition training

specific to the assigned task is given before the miner performs the task.

(f) A new miner who has less than 12 cumulative months of surface mining or equivalent experience and has completed new miner training under this section or under §48.25 of this title within 36 months before beginning work at the mine does not have to repeat new miner training. However, you must provide the miner with training specified in paragraph (b) of this section before the miner begins work at the mine.

(g) A new miner training course completed under §48.5 or §48.25 of this title may be used to satisfy the require-

ments of paragraphs (a), (b), and (c) of this section, if the course was completed by the miner within 36 months before beginning work at the mine; and the course is relevant to the subjects specified in paragraphs (b) and (c) of this section.

[64 FR 53130, Sept. 30, 1999, as amended at 67 FR 42382, June 21, 2002]

§ 46.6 Newly hired experienced miner training.

(a) Except as provided in paragraph (f) of this section, you must provide each newly hired experienced miner with training as prescribed by paragraphs (b) and (c).

(b) Before a newly hired experienced miner begins work at the mine—	<p>You must provide the miner with training in the following subjects, which must also address site-specific hazards:</p> <ol style="list-style-type: none"> (1) An introduction to the work environment, including a visit and tour of the mine, or portions of the mine that are representative of the entire mine (walkaround training). The method of mining or operation utilized must be explained and observed; (2) Instruction on the recognition and avoidance of electrical hazards and other hazards present at the mine, such as traffic patterns and control, mobile equipment (e.g., haul trucks and front-end loaders), and loose or unstable ground conditions; (3) A review of the emergency medical procedures, escape and emergency evacuation plans, in effect at the mine, and instruction on the firewarning signals and firefighting procedures; (4) Instruction on the health and safety aspects of the tasks to be assigned, including the safe work procedures of such tasks, the mandatory health and safety standards pertinent to such tasks, information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program; (5) Instruction on the statutory rights of miners and their representatives under the Act; (6) A review and description of the line of authority of supervisors and miners' representatives and the responsibilities of such supervisors and miners' representatives; and (7) An introduction to your rules and procedures for reporting hazards.
(c) No later than 60 calendar days after a newly hired experienced miner begins work at the mine—	<p>You must provide the miner with an instruction and demonstration on the use, care, and maintenance of self-rescue and respiratory devices, if used at the mine.</p>

(d) Practice under the close observation of a competent person may be used to fulfill the requirement for training on the health and safety aspects of an

assigned task in paragraph (b)(4) of this section, if hazard recognition training specific to the assigned task is given before the miner performs the task.

§ 46.7

(e) In addition to subjects specified in paragraphs (b) and (c) of this section, you may provide training on any other subjects that promote occupational health and safety for miners.

(f) You are not required to provide a newly hired experienced miner who returns to the same mine, following an absence of 12 months or less, with the training specified in paragraphs (b) and (c) of this section. Instead you must provide such miner with training on any changes at the mine that occurred during the miner's absence that could adversely affect the miner's health or safety. This training must be given before the miner begins work at the mine. If the miner missed any part of annual refresher training under § 46.8 of this part during the absence, you must provide the miner with the missed training no later than 90 calendar days after the miner begins work at the mine.

[64 FR 53130, Sept. 30, 1999, as amended at 67 FR 42382, June 21, 2002]

§ 46.7 New task training.

(a) You must provide any miner who is reassigned to a new task in which he or she has no previous work experience with training in the health and safety aspects of the task to be assigned, including the safe work procedures of such task, information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program. This training must be provided before the miner performs the new task.

(b) If a change occurs in a miner's assigned task that affects the health and safety risks encountered by the miner, you must provide the miner with training under paragraph (a) of this section that addresses the change.

(c) You are not required to provide new task training under paragraphs (a) and (b) of this section to miners who have received training in a similar task or who have previous work experience in the task, and who can demonstrate the necessary skills to perform the task in a safe and healthful manner. To determine whether task training under this section is required, you must observe that the miner can

30 CFR Ch. I (7–1–13 Edition)

perform the task in a safe and healthful manner.

(d) Practice under the close observation of a competent person may be used to fulfill the requirement for task training under this section, if hazard recognition training specific to the assigned task is given before the miner performs the task.

(e) Training provided under this section may be credited toward new miner training, as appropriate.

[64 FR 53130, Sept. 30, 1999, as amended at 67 FR 42382, June 21, 2002]

§ 46.8 Annual refresher training.

(a) You must provide each miner with no less than 8 hours of annual refresher training—

(1) No later than 12 months after the miner begins work at the mine, or no later than March 30, 2001, whichever is later; and

(2) Thereafter, no later than 12 months after the previous annual refresher training was completed.

(b) The refresher training must include instruction on changes at the mine that could adversely affect the miner's health or safety.

(c) Refresher training must also address other health and safety subjects that are relevant to mining operations at the mine. Recommended subjects include, but are not limited to: applicable health and safety requirements, including mandatory health and safety standards; information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program; transportation controls and communication systems; escape and emergency evacuation plans, firewarning and firefighting; ground conditions and control; traffic patterns and control; working in areas of highwalls; water hazards, pits, and spoil banks; illumination and night work; first aid; electrical hazards; prevention of accidents; health; explosives; and respiratory devices. Training is also recommended on the hazards associated with the equipment that has accounted for the most fatalities and serious injuries at the mines covered by this rule, including: mobile equipment (haulage and service

trucks, front-end loaders and tractors); conveyor systems; cranes; crushers; excavators; and dredges. Other recommended subjects include: maintenance and repair (use of hand tools and welding equipment); material handling; fall prevention and protection; and working around moving objects (machine guarding).

[64 FR 53130, Sept. 30, 1999, as amended at 67 FR 42382, June 21, 2002]

§ 46.9 Records of training.

(a) You must record and certify on MSHA Form 5000-23, or on a form that contains the information listed in paragraph (b) of this section, that each miner has received training required under this part.

(b) The form must include:

(1) The printed full name of the person trained;

(2) The type of training, the duration of the training, the date the training was received, the name of the competent person who provided the training;

(3) The name of the mine or independent contractor, MSHA mine identification number or independent contractor identification number, and location of training (if an institution, the name and address of the institution).

(4) The statement, "False certification is punishable under § 110(a) and (f) of the Federal Mine Safety and Health Act," printed in bold letters and in a conspicuous manner; and

(5) A statement signed by the person designated in the MSHA-approved training plan for the mine as responsible for health and safety training, that states "I certify that the above training has been completed."

(c) You must make a record of training under paragraphs (b)(1) through (b)(4) of this section—

(1) For new miner training under § 46.5, no later than—

(i) when the miner begins work at the mine as required under § 46.5(b);

(ii) 60 calendar days after the miner begins work at the mine as required under § 46.5(c); and

(iii) 90 calendar days after the miner begins work at the mine as required under § 46.5(d), if applicable.

(2) For newly hired experienced miner training under § 46.6, no later than—

(i) when the miner begins work at the mine; and

(ii) 60 calendar days after the miner begins work at the mine.

(3) Upon completion of new task training under § 46.7;

(4) After each session of annual refresher training under § 46.8; and

(5) Upon completion by miners of site-specific hazard awareness training under § 46.11.

(d) You must ensure that all records of training under paragraphs (c)(1) through (c)(5) of this section are certified under paragraph (b)(5) of this section and a copy provided to the miner—

(1) Upon completion of the 24 hours of new miner training;

(2) Upon completion of newly hired experienced miner training;

(3) At least once every 12 months for new task training, or upon request by the miner, if applicable;

(4) Upon completion of the 8 hours of annual refresher training; and

(5) Upon completion by miners of site-specific hazard awareness training.

(e) False certification that training was completed is punishable under § 110(a) and (f) of the Act.

(f) When a miner leaves your employ, you must provide each miner with a copy of his or her training records and certificates upon request.

(g) You must make available at the mine a copy of each miner's training records and certificates for inspection by us and for examination by miners and their representatives. If training certificates are not maintained at the mine, you must be able to provide the certificates upon request by us, miners, or their representatives.

(h) You must maintain copies of training certificates and training records for each currently employed miner during his or her employment, except records and certificates of annual refresher training under § 46.8, which you must maintain for only two years. You must maintain copies of training certificates and training records for at least 60 calendar days after a miner terminates employment.

§ 46.10

(i) You are not required to make records under this section of site-specific hazard awareness training you provide under § 46.11 of this part to persons who are not miners under § 46.2. However, you must be able to provide evidence to us, upon request, that the training was provided, such as the training materials that are used; copies of written information distributed to persons upon their arrival at the mine; or visitor log books that indicate that training has been provided.

§ 46.10 Compensation for training.

(a) Training must be conducted during normal working hours. Persons required to receive training must be paid at a rate of pay that corresponds to the rate of pay they would have received had they been performing their normal work tasks.

(b) If training is given at a location other than the normal place of work, persons required to receive such training must be compensated for the additional costs, including mileage, meals, and lodging, they may incur in attending such training sessions.

§ 46.11 Site-specific hazard awareness training.

(a) You must provide site-specific hazard awareness training before any person specified under this section is exposed to mine hazards.

(b) You must provide site-specific hazard awareness training, as appropriate, to any person who is not a miner as defined by § 46.2 of this part but is present at a mine site, including:

- (1) Office or staff personnel;
- (2) Scientific workers;
- (3) Delivery workers;
- (4) Customers, including commercial over-the-road truck drivers;
- (5) Construction workers or employees of independent contractors who are not miners under § 46.2 of this part;
- (6) Maintenance or service workers who do not work at the mine site for frequent or extended periods; and
- (7) Vendors or visitors.

(c) You must provide miners, such as drillers or blasters, who move from one mine to another mine while remaining employed by the same production-operator or independent contractor with

30 CFR Ch. I (7–1–13 Edition)

site-specific hazard awareness training for each mine.

(d) Site-specific hazard awareness training is information or instructions on the hazards a person could be exposed to while at the mine, as well as applicable emergency procedures. The training must address site-specific health and safety risks, such as unique geologic or environmental conditions, recognition and avoidance of hazards such as electrical and powered-haulage hazards, traffic patterns and control, and restricted areas; and warning and evacuation signals, evacuation and emergency procedures, or other special safety procedures.

(e) You may provide site-specific hazard awareness training through the use of written hazard warnings, oral instruction, signs and posted warnings, walkaround training, or other appropriate means that alert persons to site-specific hazards at the mine.

(f) Site-specific hazard awareness training is not required for any person who is accompanied at all times by an experienced miner who is familiar with hazards specific to the mine site.

§ 46.12 Responsibility for independent contractor training.

(a)(1) Each production-operator has primary responsibility for ensuring that site-specific hazard awareness training is given to employees of independent contractors who are required to receive such training under § 46.11 of this part.

(2) Each production-operator must provide information to each independent contractor who employs a person at the mine on site-specific mine hazards and the obligation of the contractor to comply with our regulations, including the requirements of this part.

(b)(1) Each independent contractor who employs a miner, as defined in § 46.2, at the mine has primary responsibility for complying with §§ 46.3 through 46.10 of this part, including providing new miner training, newly hired experienced miner training, new task training, and annual refresher training.

(2) The independent contractor must inform the production-operator of any hazards of which the contractor is

Mine Safety and Health Admin., Labor

§ 47.2

aware that may be created by the performance of the contractor's work at the mine.

PART 47—HAZARD COMMUNICATION (HazCom)

Subpart A—Purpose, Scope, Applicability, and Initial Miner Training

Sec.

- 47.1 Purpose of a HazCom standard; applicability.
47.2 Operators and chemicals covered; initial miner training.

Subpart B—Definitions

- 47.11 Definitions of terms used in this part.

Subpart C—Hazard Determination

- 47.21 Identifying hazardous chemicals.

Subpart D—HazCom Program

- 47.31 Requirement for a HazCom program.
47.32 HazCom program contents.

Subpart E—Container Labels and Other Forms of Warning

- 47.41 Requirement for container labels.
47.42 Label contents.
47.43 Label alternatives.
47.44 Temporary, portable containers.

Subpart F—Material Safety Data Sheets (MSDS)

- 47.51 Requirement for an MSDS.
47.52 MSDS contents.
47.53 Alternative for hazardous waste.
47.54 Availability of an MSDS.
47.55 Retaining an MSDS.

Subpart G [Reserved]

Subpart H—Making HazCom Information Available

- 47.71 Access to HazCom materials.
47.72 Cost for copies.
47.73 Providing labels and MSDSs to customers.

Subpart I—Trade Secret Hazardous Chemical

- 47.81 Provisions for withholding trade secrets.
47.82 Disclosure of information to MSHA.
47.83 Disclosure in a medical emergency.
47.84 Non-emergency disclosure.
47.85 Confidentiality agreement and remedies.

- 47.86 Denial of a written request for disclosure.
47.87 Review of denial.

Subpart J—Exemptions

- 47.91 Exemptions from the HazCom standard.
47.92 Exemptions from labeling.

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Subpart A—Purpose, Scope, Applicability, and Initial Miner Training

§ 47.1 Purpose of a HazCom standard; applicability.

The purpose of this part is to reduce injuries and illnesses by ensuring that each operator—

- (a) Identifies the chemicals at the mine,
(b) Determines which chemicals are hazardous,
(c) Establishes a HazCom program, and
(d) Informs each miner who can be exposed, and other on-site operators whose miners can be exposed, about chemical hazards and appropriate protective measures.
(e) As of September 23, 2002, all mines employing six or more miners are required to comply with this part.
(f) As of March 21, 2003, all mines employing five or fewer miners are required to comply with this part.

§ 47.2 Operators and chemicals covered; initial miner training.

- (a) This part applies to any operator producing or using a hazardous chemical to which a miner can be exposed under normal conditions of use or in a foreseeable emergency. (Subpart J of this part lists exemptions from coverage.)
(b) Operators of mines which employ six or more miners must instruct each miner with information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program by September 23, 2002. Operators of mines that employ five or fewer miners must instruct each miner with information