

INDEPENDENT CONTRACTOR

30 CFR § 45.1 Scope and purpose.

This part sets forth information requirements and procedures for independent contractors to obtain an MSHA identification 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.

30 CFR § 45.2 Definitions.

As used in this part:

- (a) *Act* means the Federal Mine Safety and Health Act of 1977, Pub. L. 91-173, as amended by Pub. L. 95-164;
- (b) *District Manager* means the District Manager of the Mine Safety and Health Administration District in which the independent contractor is located;
- (c) *Independent contractor* means any person, partnership, corporation, subsidiary of a corporation, firm, association or other organization that contracts to perform services or construction at a mine; and,

See MSHA's Program Policy Manual

- (d) *Production-operator* means any owner, lessee, or other person who operates, controls or supervises a coal or other mine.

30 CFR § 45.3 Identification of independent contractors.

- (a) Any independent contractor may obtain a permanent MSHA identification number. To obtain an identification number, an independent contractor shall submit to the District Manager in writing the following information:
 - (1) The trade name and business address of the independent contractor;
 - (2) An address of record for service of documents;
 - (3) A telephone number at which the independent contractor can be contacted during regular business hours; and
 - (4) The estimated annual hours worked on mine property by the independent contractor in the previous calendar year, or in the instance of a business operating less than one full calendar year, prorated to an annual basis.

30 CFR § 45.4 Independent contractor register.

- (a) Each independent contractor shall provide the production-operator in writing the following information:
 - (1) The independent contractor's trade name, business address and business telephone number;
 - (2) A description of the nature of the work to be performed by the independent contractor and where at the mine the work is to be performed;
 - (3) The independent contractor's MSHA identification number, if any; and

INDEPENDENT CONTRACTOR

- (4) The independent contractor's address of record for service of citations, or other documents involving the independent contractor.
- (b) Each production-operator shall maintain in writing at the mine the information required by paragraph (a) of this section for each independent contractor at the mine. The production-operator shall make this information available to any authorized representative of the Secretary upon request.

30 CFR § 45.5 Service of documents; independent contractors.

Service of citations, orders and other documents upon independent contractors shall be completed upon delivery to the independent contractor or mailing to the independent contractor's address of record.

30 CFR § 45.6 Address of record and telephone number; independent contractors.

- (a) The address and telephone number required under this part shall be the independent contractor's official address and telephone number for purposes of the Act. Service of documents upon independent contractors may be proved by a Post Office return receipt showing that the documents were delivered to the address of record or that the documents could not be delivered to the address of record because the independent contractor is no longer at that address and has established no forwarding address; because delivery was not accepted at that address; or because no such address exists. Independent contractors may request service by delivery to another appropriate address of record provided by the independent contractor. The telephone number required under this part will be used in connection with the proposed penalty assessment procedures in 30 CFR part 100.

PROGRAM POLICY MANUAL

III. 45-1 General Enforcement Policy for Independent Contractors

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

INDEPENDENT CONTRACTOR

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 its 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.

The following guidelines cover the responsibility of independent contractors for compliance with 30 CFR Parts 41, 48 and 50.

1. **Filing of Legal Identity Reports Under 30 CFR Part 41**

Independent contractors working at mines are not required to file legal identity reports under Part 41. Procedures for the identification of independent contractors are explained below under 45.3, MSHA Identification of Independent Contractors.

2. **Training of Independent Contractors and Their Employees Under 30 CFR Part 48**

a. ***Construction Workers***

See Part 48 in this Manual, Paragraphs 48.2(a)(1)/48.22(a)(1) - "Miner."

b. ***Comprehensive and Hazard Training***

See Part 48 in this Manual.

c. ***Production of Training Records***

Independent contractors required to provide training are also required to promptly produce training records to show that training has been provided. The location where the records are maintained, such as at a mine site, or at the contractor's office, is up to the independent contractor.

d. ***Enforcement Action for Training Violations***

1.) General

An order should be issued under Section 104(g) of the Act to the direct employer of any miner who has not received the required training under Part 48. This means that a 104(g) order should be issued to the independent contractor for any persons who are directly employed by the independent contractor and who are not properly trained. Similarly, a 104(g) order should be issued to the production-operator for any untrained persons directly employed by the production-operator. See also Item 3),

INDEPENDENT CONTRACTOR

below. In addition, it is the policy of Coal Mine Safety and Health to issue a corresponding citation to the independent contractor or production operator for failure to provide the miner with the requisite training.

2.) Violations Involving Production-Operators

Each production-operator is required to have an approved training plan under Part 48 and to comply with the provisions of that plan in training each of the miners it employs. As discussed in Item 3), below, where it cannot be determined who employs an untrained person, the production-operator should be issued a 104(g) order for that person.

3.) Violations Involving Independent Contractors

Independent contractors are not required to have an approved training plan under Part 48. However, as discussed, independent contractors and their employees must be trained in accordance with Part 48. Independent contractors may comply with the training requirements by either making arrangements to have their employees trained under an existing approved training plan and program, or by filing and adopting their own approved training plan.

In either event, the independent contractor should be issued a 104(g) order for any of his/her employees who are not trained in accordance with a plan approved under Part 48. Care should be taken when issuing a 104(g) order to an independent contractor when several contractors or subcontractors are present at the mine. The inspector must be sure that the untrained person is directly employed by the independent contractor to whom the 104(g) order is issued. If it cannot be determined who employs the untrained person, the production-operator should be issued the 104(g) order.

The foregoing enforcement guidelines for 30 CFR Part 48 are consistent with the training standard's purpose to assure that all persons at mines are effectively trained in matters affecting their health and safety, thereby reducing the number and severity of injuries. These guidelines recognize that not all independent contractors are able to practically implement their own Part 48 training programs. Accordingly, independent contractors may comply with the training requirements in the manner most suitable for their size and type of business by making arrangements to have their employees trained under an existing approved plan or by filing and adopting their own approved plans.

3. **Notification, Investigation, Reporting and Recordkeeping Requirements Under 30 CFR Part 50**

Independent contractors working at mines are required to comply with all provisions of Part 50 pertaining to their employees. In order to assure accurate reporting and recordkeeping and to avoid duplication, it is important that production-operators and their independent contractors carefully coordinate their Part 50 responsibilities.

For detailed information on the reporting responsibilities and obligations of independent contractors, see Part 50 in this Manual.

INDEPENDENT CONTRACTOR

45.2(c) 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.

45.3 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:

1. Mine development, including shaft and slope sinking;
2. Construction or reconstruction of mine facilities; including building or rebuilding preparation plants and mining equipment, and building additions to existing facilities;
3. Demolition of mine facilities;
4. Construction of dams;
5. Excavation or earthmoving activities involving mobile equipment;
6. Equipment installation, such as crushers and mills;
7. Equipment service or repair of equipment on mine property for a period exceeding five consecutive days at a particular mine;
8. 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
9. 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.

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. This means that each independent contractor is assigned only one identification number to be used on any and all job sites.

INDEPENDENT CONTRACTOR

45.4 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 or 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, no violation 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 promptly is made available to the inspector so that this goal can be accomplished, then there is no violation of Section 45.4.

