


would not be a miner, even if he or she is at a mine site on a daily basis.

Several commenters suggested that the final rule provide examples of the types of workers who are considered "miners." Commenters believed that examples would greatly benefit operators in determining who is a "miner" under the final rule. Although we agree that examples would provide clarification, we believe that this guidance is best provided in the compliance materials that we will be developing to assist production-operators and independent contractors in complying with the final rule.

Mining operations. As indicated in the preamble discussion of the definition of "miner," the final rule defines "miner" as a person engaged in mining operations, and final § 46.2(h) defines "mining operations". The proposal would have defined "miners" as workers engaged in mining operations integral to "extraction and production." This definition would also have specifically included the associated haulage of these materials at the mine. The proposed rule would have defined "extraction or production" as "the mining, removal, milling, crushing, screening, or sizing of minerals at a mine."

"Mining operations" was not defined in the proposal, and, as discussed above, essentially replaces the proposed definition of "extraction or production". "Mining operations" is a slightly broader definition that includes 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. This change responds to commenters who were concerned that the proposed definition of "miner" was too narrow and that workers who were exposed to significant mining hazards, such as maintenance workers, would not be included within the definition. The definition of "mining operations" specifically includes maintenance and repair of mining equipment, as well as haulage of materials within the mine site. Because the enumerated activities are broader than "extraction and production," they are referred to in the final rule by the term "mining operations."

One commenter stated that the haulage of processed materials from stockpiles to offsite customers should be excluded from the definition of

"miner."  In fact, we intended to exclude customers and delivery personnel from the definition of "miner." To clarify this point, the definition of "mining operations" includes the haulage of materials within the mine. Haulage of materials away from the mine is not included in the final rule's definition of "mining operations," and persons who perform only this type of work do not fall within the definition of "miner." Section 42.2(g)(2) also indicates that commercial over-the-road truck drivers may be considered "customers" under the final rule and excluded from the definition of "miner."

The definition of "mining operations" includes "mine development", to make clear that certain activities preliminary to extraction would be included. These activities include such things as drilling, mining and developmental work on both newly discovered and established mineral deposits. We have historically considered this phase of activities part of the extraction phase of mining and thus subject to our jurisdiction. However, this would not include exploratory drilling, reconnaissance, search, or prospecting that takes place off of an existing mine site and that is conducted in the search of the initial discovery of mineral deposits.

New miner. Section 46.2(i) of the final rule adopts the proposed definition of "new miner" with minor changes. The final rule defines a new miner as a person who is beginning employment as a miner with a production-operator or independent contractor and who is not an experienced miner. As discussed elsewhere in the preamble, the final rule substitutes the terms "production-operator or independent contractor" for the broader term of "operator," to make it consistent with the wording of the definition in the final rule for "newly hired experienced miner."

Newly hired experienced miner. The definition of this term is similar to the definition of "new miner". "Newly hired experienced miner" was not defined in the proposed rule, but is defined in § 46.2(j) of the final rule as an experienced miner who is beginning employment with a production-operator or independent contractor.

Commenters questioned whether certain miners, such as those employed by an independent contractor who move from mine to mine, would be considered new miners or newly hired experienced miners. We agree with these commenters that the proposed

move from one mine to another, drillers and blasters, but who remain employed by the same production operator or independent contractor, are not considered newly hired experienced miners and do not need training under § 46.6 of the final rule. However, § 46.11 specifically requires that miners receive site-specific hazard awareness training for each mine.

Normal working hours. Section 46.2(k) of the final rule, like the proposal, requires that training be conducted during "normal working hours." § 46.2(k) adopts the proposed definition of "normal working hours" and provides that "normal working hours" means a period of time during which a miner is otherwise scheduled to work. This definition is based on a similar provision in part 48 and also provides that the sixth or seventh working hour may be used to conduct training, provided that the miner's work schedule has been in place long enough to be accepted as a common practice. This aspect of the proposed rule did not receive much comment, and the final definition is adopted with a minor change from the proposal. The final rule references "production-operator or independent contractor" rather than "operator." As discussed earlier, this change is intended to eliminate any confusion that may have been caused by the use of the term "operator" in the proposal.

As discussed under § 46.10 of the preamble, we intend that the schedule change must have been in place long enough to provide reasonable assurance that the schedule change was not motivated by the desire to train miners on what traditionally been a non-work day.

Comments received on the proposed definition raised the issue of whether travel to an off-site location and training conducted at that location should be conducted during normal working hours. These issues are addressed in the preamble discussion for final § 46.10.

Operator. Operator is defined in § 46.2(l) of the final rule to mean production-operators (defined in section 4 as owners, lessees, or other persons who operate or control a mine) and independent contractors who perform services at a mine. This definition is consistent with the definition of "operator" in section 4 of the Act. The term "operator" is used throughout the preamble to refer to a person or entities responsible for providing health and safety training