

# **MSHA Handbook Series**

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



**Handbook Number PH89-I-1**  
**Petitions For Modification Handbook**

## **PREFACE**

This handbook sets forth guidelines and procedures for Coal Mine Safety and Health personnel involved in the processing of Petitions for Modification under section 101(c) of the Federal Mine Safety and Health Act of 1977. Previously issued procedures and instructions on this subject matter are superseded by this handbook.

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Jerry L. Spicer  
Administrator  
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## CHAPTER 1 - INTRODUCTION AND AUTHORITY

### A. Introduction

The handbook sets forth MSHA'S policies and procedures concerning petitions for modification (PFM) of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act). The handbook has been developed to provide working guidelines for the preparation and processing of PFM's; to provide procedures for conducting in-depth investigations of PFM's; and to ensure that supporting documentation is provided during investigations.

Prompt processing of each PFM is important. Therefore, each phase of the petition process is under the supervision of a coordinator in each group having the responsibility to investigate, review, and recommend the disposition of each PFM.

### B. Authority

#### 1. **Mine Act, Section 101(c):**

Upon petition by the operator or the representative of miners, the Secretary may modify the application of any mandatory safety standard to a coal or other 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. Upon receipt of such petition, the Secretary shall publish notice thereof and give notice to the operator or the representative of miners in the affected mine, as appropriate, and shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of such operator or representative or other interested party to enable the operator or the representative of miners in such mine or other interested party to present information relating to the modification of such standard. Before granting any exception to a mandatory safety standard, the findings of the Secretary or his authorized representative shall be made public and shall be available to the representative of the miners at the affected mine. The Secretary shall issue a decision incorporating his findings of fact therein, and send a copy thereof to the operator or the representative of the miners, as appropriate. Any such hearing shall be of record and shall be subject to section 554 of Title 5 of the United States Code.

#### 2. **Part 44, Title 30, Code of Federal Regulations:**

Part 44, entitled "Rules of Practice for Petitions for Modification of Mandatory Standards", sets forth procedures for filing, processing, and deciding petitions filed under section 101(c) of the Mine Act for modifying applications of any mandatory safety standard to a coal or other mine.

Section 44.13 delegates to the Administrator the responsibility to issue Proposed Decisions and Orders based upon all available information, including the results of investigation.

## **CHAPTER 2 - PROCEDURES FOR PETITIONING**

### **A. Who May File a Petition (30 CFR 44.10)**

A petition may be filed only by the operator of the affected mine or any representative of the miners at such mine.

### **B. Grounds for Granting a Petition (30 CFR 44.4)**

The Secretary may modify the application of any mandatory safety standard upon a determination that:

1. An alternative method of achieving the result of the standard exists that will at all times guarantee no less than the same measure of protection afforded by the standard; or
2. Application of the standard will result in a diminution of safety to the miners.

It may be appropriate to consider a combination of 1 and 2 above because total elimination of the standard (Item 2 above) without an alternative method may create a void in the intent of the safety standard. Also, the Petitioner may have requested the PFM for both 1 and 2.

When a modification of a standard is granted based on a finding that the application of that standard will result in a diminution of safety to the miners, that final decision and order must be implemented and complied with at the mine as long as it remains in effect until the Decision and Order is terminated.

When a modification of a standard is granted for an alternative method which will provide the same or a greater degree of safety to the miners as listed in Item 1 above, then the operator can use the alternative method or continue to follow the requirements of that safety standard. However, if the operator does not implement the alternative method within a reasonable time period, an investigation should be made by MSHA to determine if the petition or a part of the petition should be terminated.

### **C. What a Petition Must Contain (30 CFR 44.11)**

MSHA's Office of Standards, Regulations, and Variances has the authority to screen petitions to ensure that they meet minimum requirements. If petitions are incomplete, they are sent back to

the Petitioner for additional information. The following information is required by 30 CFR Part 44, to be included in **every** petition:

1. The name and address of the Petitioner.
2. The mailing address and mine identification number of the mine(s).
3. The mandatory safety standard to which the petition is directed.
4. A concise statement of the modification requested, and whether the Petitioner proposes to establish an alternative method in lieu of the mandatory safety standard or alleges that application of the standard will result in a diminution of safety to the miners affected or requests relief based on both grounds.
5. A detailed statement of the facts the Petitioner would show to establish the grounds upon which it is claimed a modification is warranted.
6. Identification of any representative of the miners at the affected mine, if the Petitioner is a mine operator.

**D. Notification by Petitioner to Other Parties (30 CFR 44.10)**

The regulations require an operator to give a copy of any petition filed to the representative of the miners at the mine or the representative of the miners to give a copy of any petition filed to the operator, as appropriate. This can be done either personally or by registered or certified mail, return receipt requested. If the petitioner fails to state in the petition that a copy was served on the other party (representative of the miners or operator), the petition will be returned by the Office of Standards, Regulations, and Variances.

**E. Posting of Petition (30 CFR 44.9)**

An operator of a mine where there is no representative of the miners must post a copy of the petition on the mine bulletin board until such time as there is a ruling on the petition. MSHA investigators shall determine if a copy of the petition has been posted before starting their investigation.

**F. Request for Modification of More Than One Standard (30 CFR 44.11(b))**

An operator cannot request modification of more than one safety standard in a single petition. However, the regulations do allow an operator to request modification of a single standard at more than one of the operator's mines, if there are identical issues of law and fact at each mine.

A petition cannot be filed with the Assistant Secretary where the regulation specifically delegates authority to the District Manager to grant a waiver of the standard, unless it is accompanied by correspondence from the appropriate District Manager denying the request for the waiver and explaining the reasons for the denial.

**G. Communications Regarding Petitions**

It is important in the petition process that the file for each petition be complete. Therefore, all verbal contacts with any party to the petition, both internal and external, shall be documented and placed in the file. Contacts with the Office of the Solicitor for advice need not be documented.

**H. Application for Interim Relief:**

An application for interim relief from enforcement of a mandatory safety standard may be filed in accordance with 30 CFR 44.16. However, a recent decision of the United States Court of Appeals for the District of Columbia Circuit invalidated two orders issued by the Administrator for Coal Mine Safety and Health (CMS&H) which had granted interim relief and were contested. **SEE INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA V. MINE SAFETY AND HEALTH ADMINISTRATION**, 823 F.2D 608 (D.C. CIR. 1987). The court's opinion limits the ability to grant interim relief pursuant to 30 CFR 44.6. Interim relief may still be available in cases where a diminution of safety has been found or where an emergency situation exists.

**I. Revocation or Termination of a Petition for Modification**

Under Part 44.52, any party to a proceeding in which a modification of a mandatory safety standard has been granted, including MSHA, may request that relief from the standard be revoked due to a change in circumstances or because findings which justified the relief are no longer valid. When a District Manager believes a modification should be revoked or terminated and the operator is opposed to the action by not requesting the necessary action, an investigation should be made and a memorandum forwarded to the Administrator stating the reasons why all or part of the petition should be revoked or terminated.

The following is a partial listing of reasons that the operator or MSHA should consider for termination of the petition:

1. The mine or the area affected by the petition is abandoned.
2. Noncompliance with the terms of the petition.
3. Failure of the operator to implement the petition.
4. The petition cannot be served on the operator through normal procedures.



## CHAPTER 3 - PROCEDURES FOR PROCESSING 101(C) PETITIONS FOR MODIFICATION

Prompt handling of each PFM is an important part of the process. Therefore, it is essential that each phase of the petition from start to finish be under the supervision of a coordinator who has been assigned the responsibility of processing petitions. Chapter 3 of this handbook outlines the primary groups and their responsibility.

### A. Office of Standards, Regulations, and Variances

#### 1. Responsibility

It is the responsibility of the Coordinator in the Office of Standards, Regulations, and Variances to:

- a. Document date received and review the contents of each PFM to ensure that the petitioner has included all the information required by 30 CFR Part 44 and any maps or sketches referred to in the petition.
- b. Give public notice of a properly submitted petition and publish such notice in the **Federal Register**.
- c. Publish quarterly summary reports of all granted petitions in the **Federal Register**.

#### 2. Process

Upon receipt of a PFM from the Assistant Secretary, the Office of Standards, Regulations, and Variances initiates the following action:

- a. Screen petition for the minimum requirements stated in 30 CFR 44.11. Acknowledge receipt of the petition or request additional information, as appropriate.
- b. Assign a docket number when all the required information has been received.
- c. Publish notice of the petition in the **Federal Register**. Such notice will contain a statement that the petition has been filed, identify the Petitioner and the mine(s) involved, cite the mandatory safety standard, describe the requested relief, and summarize the facts alleged by the Petitioner to justify the requested modification. The notice will advise interested parties that they may, within 30 calendar days from date of publication in the **Federal Register**, in writing, comment upon or provide information relative to the proposed modification.

- d. Prepare a petition case file and forward it immediately to the Chief, Division of Safety (DOS), CMS&H, when the notice of the petition is published in the **Federal Register**. Petitions containing all the required information will be forwarded to the **Federal Register** within 15 working days. Petitions lacking the required information will not be assigned a docket number until the application is complete. Petitions requiring additional information shall be dismissed if the information has not been received within 30 calendar days.

## **B. Coal Mine Safety and Health - Division of Safety**

### **1. Responsibility**

It is the responsibility of the DOS coordinator, CMS&H, to:

- a. Cause an investigation to be made into the merits of the petition and any request for interim relief.
- b. Recommend the granting or denying of applications for interim relief.
- c. Recommend proposed decisions and orders to the Administrator.
- d. Refer requests for hearing to the Chief Administrative Law Judge.
- e. Recommend to the Administrator that the petition be dismissed.

### **2. Process**

The appropriate district conducts investigations into the merits of the petition and forwards the information to the DOS. The DOS reviews the petition file and, if in agreement with the draft PDO, the DOS coordinator forwards the petition through proper channels to the Administrator's office for signature.

### **3. Administrative Procedures**

- a. The DOS receives the petition case file from the Office of Standards, Regulations, and Variances. A copy of the PFM and any amendments are mailed to the district(s) in which the mine(s) is located with a transmittal memorandum. Concurrently with the investigation, the petition is assigned to a division specialist or engineer (reviewer) in the appropriate group to determine if the standard is, in fact, subject to modification under 30 CFR Part 44. The assigned DOS reviewer will work, as necessary, with the district coordinator regarding the investigation, writing the report of investigation, and preparing a draft PDO.

- b. Upon receipt of the petition by the district office, the petition is assigned to a person who is qualified to make the investigation. The name of the district coordinator(s) and the investigator(s) are identified on a form memorandum and returned to the DOS coordinator acknowledging receipt of the petition. The investigation shall be completed and the investigative report and a draft PDO sent to the DOS coordinator within 45 days of receipt of the petition. If the 45-day deadline cannot be met, the district coordinator shall immediately notify the DOS coordinator by telephone and prepare a memorandum stating the reason for the delay, as well as the dates that the investigation and the report will be completed.

#### **4. Investigation**

##### **a. Purpose of the Investigation**

The purpose of the investigation is to determine the accuracy of the facts alleged by the Petitioner and provide any additional information that would assist in determining whether; (1) an alternative method of achieving the results 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 (2) the application of such standard to such mine will result in a diminution of safety to the miners in such mine; or (3) a combination of (1) and (2).

##### **b. Pre-Investigation Review**

The investigator(s) shall review the petition and other appropriate documents such as the regulations, policies, similar petitions that have been granted, and any petitions in effect at the mine prior to conducting the physical investigation. If necessary, telephone contact should be made between the investigator(s), the district coordinator, and the DOS coordinator or assigned reviewer to discuss the merits of the petition, similar petitions, and possible problems which may be encountered in the investigation.

#### **5. Procedures for Conducting Investigation**

- a. Prior to beginning the investigation, a meeting shall be held at the mine by the investigator(s) with all parties to the petition to discuss the scope of the investigation and how it will be conducted. The time and date of this meeting may be prearranged.
- b. The investigator shall interview a representative number of miners who will be affected by the petition to ascertain their opinion of the proposed modification. If a representative of the miners filed the petition, the operator shall be interviewed.

- c. The investigation shall cover all areas, including future or projected areas of the mine, that may be affected by the petition.
- d. Accurate measurements, samples, etc., shall be taken, where practical, to support determinations regarding the validity of statements made in the petition. The investigator(s) shall take photographs and make drawings and charts, as appropriate.
- e. When a Petitioner proposes an alternative method, the investigation shall address each allegation as it applies to or affects the petition. Where possible, the alternative method should be tested, but only under controlled conditions.

Where the alternative method involves new equipment not yet installed in the mine, the investigator must discuss each allegation based on information depicted in the drawings and specifications of the equipment, any equipment descriptions in brochures or pamphlets, or other technical information received from the operator. In these situations, actual inspection of the equipment to ensure its conformity with these documents must occur prior to start-up of the equipment involved and will be a condition of any modification granted.

- f. If the Petitioner alleges that the application of such standard to the mine will result in a diminution of safety to the miners, each specific allegation listed in the petition must be thoroughly addressed.
- g. Investigator(s) shall not make comments or commitments to the operator or to the representative of the miners as to whether the petition will be granted or denied. However, sufficient dialogue should transpire to ensure that the investigation is complete and the petition meets all the requirements.
- h. Any inquiries directed to an investigator(s) from an attorney representing either party shall be referred to the DOS coordinator.
- i. When the cabs and canopies standard is involved, the investigator(s) shall take measurements of the minimum height (bottom to top) in the working section, provided this minimum height is not a result of poor mining practices. Should this be the case, such measurement shall be disregarded and the minimum height determined from measurements at locations where accepted practices were followed. If the equipment is required to travel to other locations in the mine, the minimum heights must be determined between these locations. In addition:
  - 1) The investigator shall determine the thickness of roof support material and shall record descriptions of actual mining conditions, such as rolls and undulations, in his or her notes.

- 2) In addition to the make, model and type, the investigator(s) shall take measurements of the frame height of each piece of electric face equipment for which modification is sought. The measurements should not include sideboards or electrical components located on top of the machines.
  - 3) The investigator(s) shall determine if the equipment for which the modification is requested had ever been provided with a cab or canopy and if similar equipment operating in other mines under similar conditions is equipped with cabs or canopies.
- j. District Managers may request assistance directly from other MSHA entities, such as Technical Support, on specific allegation(s) contained in a PFM. The district may incorporate the findings reported by the office providing assistance in the district investigation report or include the report of findings made by the office providing assistance.

**6. Procedures to be Followed When Investigations Cannot or Should Not Be Conducted**

- a. If an investigator(s) is informed by a responsible official of the operator that the petition will be withdrawn, the investigator(s) shall advise the operator to promptly write the Chief, DOS, stating that the petition is withdrawn. The DOS coordinator shall be notified by telephone that the operator intends to withdraw the petition.
- b. If the mine has changed ownership, the investigation shall not be made unless the new owner affirms, in writing to the Chief, DOS, a desire to seek modification of the standard. If no such affirmation is received from the new owner, the DOS coordinator shall be notified within 30 days and the petition will be dismissed.
- c. A memorandum shall be prepared and submitted to the DOS coordinator through channels whenever an investigator(s) goes to a mine to conduct an investigation and finds any of the following conditions:
  - 1) The mine is active, but not producing coal;
  - 2) The mine is not working and the operator is unable to give a definite date as to when production will resume;
  - 3) The entire mine is sealed for any reason;
  - 4) The inspector is denied entry; or
  - 5) The mine is permanently or temporarily abandoned and the mine will not resume operation within the 45 days allowed to conduct the investigation. If

it is believed that the mine will resume operation within a reasonable length of time, an extension of time should be requested to conduct the investigation.

## **7. Preparation of Investigation Report**

- a.** The investigator(s) shall prepare a memorandum report of investigation, which shall be submitted through channels to the DOS coordinator. The report shall include, but not limited to, the following information:
  - 1.** Date of investigation
  - 2.** Names of persons participating in the investigation
    - a.** Identify representative of miners or indicate there is no representative of miners
    - b.** Number of miners interviewed
    - c.** Number of supervisors interviewed
  - 3.** Brief description of mine
    - a.** The number of working sections, number of miners, and the tonnage
    - b.** Conditions, equipment and/or mining method affecting the petition
    - c.** Area and equipment affected by the petition in detail
    - d.** Number of miners affected
  - 4.** Basis of petition
    - a.** Alternative method
    - b.** Diminution of safety
    - c.** Both (a&b)
  - 5.** Allegations which form basis of the petition
    - a.** Each point shall be addressed. For example,  
If the petitioner alleges an alternative method, all aspects of this method must be explored to determine if the proposed method provides at least the same measure of safety as the standard.



at least the same protection afforded by the standard to the miners. Draft PDO's that recommend denial do not require a reason in the PDO; however, the investigative report must clearly reflect the reason.

- b. Any additional terms and conditions included in the draft PDO should be based on all available information and be substantiated from such sources as the investigative report, discussions with Headquarters officials, previously issued PDO's, if appropriate, and additional information or comments submitted by the petitioner, the representative of the miners, and other interested parties.
- c. Sample Draft Proposed Decision and Order

In the matter of                      Petition for Modification  
**(Blank)** Company, Inc.                      Docket No. M-00-00-C  
Hidden Mine  
I.D. No. 00-00000

### **PROPOSED DECISION AND ORDER**

On **(Date)**, a petition was filed seeking a modification of the application of 30 CFR **(Sec. No.)** to Petitioner's **(Name)**, located in **(Name)** County, **(State)**. The Petitioner alleges that application of this standard will result in a diminution of safety to the miners.

MSHA personnel conducted an investigation of the petition and filed a report of their findings and recommendations with the Administrator for Coal Mine Safety and Health. After a careful review of the entire record, including the petition and MSHA's investigative report and recommendation, this Proposed Decision and Order is issued.

### **Finding of Fact and Conclusion of Law**

It has been determined that application of 30 CFR **(Sec. No.)** to the subject mine will result in a diminution of safety to the miners as it applies to the **(List number and type of equipment)**. However, application of 30 CFR **(Sec. No.)** will not result in a diminution of safety to the miners as it applies to the **(No. and type)** equipment.

On the basis of the petition and the findings of MSHA's investigation, **(Blank)** Coal Company, Inc., is granted a modification of the application of 30 CFR **(Sec. No.)** to its **(Name)** Mine for the **(Equipment)**.

### **ORDER**

Wherefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health, and pursuant to Section 101(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C., sec. 811(c), it is ordered that **(Blank)** Coal Company, Inc.'s Petition for Modification of the application of 30 CFR **(Sec. No.)** in the **(Name)** Mine is hereby:

**DENIED**, for the **(number and type of equipment portion of mine affected, etc.)**

**GRANTED**, condition upon compliance....**(use as appropriate one of the following statements)**

- \* 1) with all provisions of the petitioner's alternative method.
- \* 2) with all provisions of the petitioner's alternative method and the following terms and conditions.
- \* 3) with the following terms and conditions.

**(Identify number, type equipment, terms and conditions, if any).**

**(The next three paragraphs should be used as appropriate)**

- \* Any portion of this decision granting a modification of 30 CFR\* **Sec. No.** is conditioned upon circumstances at the mine at the time of issuance of this decision. Additionally, future face equipment purchased for this mine must be provided with properly installed canopies or cabs prior to being used in this mine. If and when technology is available to provide canopies or cabs on the present equipment for which this decision grants a modification without resulting in a diminution of safety to the miners, then such equipment shall be provided with canopies or cabs and this modification will no longer be effective.
- \* Following the expiration of one year from the date of issuance of this decision, MSHA may review the modification to determine if justification for granting the modification still exists or that a reconsideration is necessary or desirable.
- \* The terms and conditions of this proposed decision and order shall supersede conflicting provisions in the petitioner's proposed alternative method.

**(The following statements are to appear in all petitions)**

Any party to this action desiring a hearing on this matter must file in accordance with 30 CFR 44.14, within 30 days, a request with the Administrator for Coal Mine Safety and Health 4015 Wilson Boulevard, Arlington, Virginia 22203.

If a hearing is requested, the request shall contain a concise summary of position on the issues of fact or law desired to be raised by the party requesting the hearing, including specific objections to the proposed decision. A party other than Petitioner who has requested a hearing shall also comment upon all issues of fact or law presented in the petition, and any party to this action requesting a hearing may indicate a desired hearing site. If no request for a hearing is filed within 30 days after service thereof, the Decision and Order will become final and must be posted by the operator on the mine bulletin board at the mine.

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Deputy Administrator  
for Coal Mine Safety and Health

**Certificate of Service**

I hereby certify that a copy of this proposed decision was served personally or mailed, postage prepaid, this \_\_\_\_\_ day of \_\_\_\_\_, 1986, to:

(Names and addresses of interested parties.)

**9. DECISIONS AND ORDERS**

The draft PDO, investigative report and petition shall be given to the DOS reviewer. A review of the entire file, including any necessary changes, shall be completed within 15 calendar days. The entire file is then reviewed for legal and technical content by the DOS coordinator, the Office of the Solicitor, and the Chief, DOS. The draft PDO and investigative report is then mailed to all parties for comments. All parties shall have 20 calendar days to comment on the draft PDO. After the 20-day comment period has expired, any comments regarding the draft PDO will be reviewed and a final PDO will be issued. The PDO shall be routed through channels to the Administrator's office for signature. The PDO shall be mailed by certified mail to the parties to the petition.

All parties shall have 30 calendar days to review the PDO and to request a hearing if desired. If a request for a hearing is not received within the 30-day period, the PDO will become final.



**(Insert any additional or modified terms or conditions and special paragraphs in this location, such as those shown on Page Nos. 16, 17 and 18).**

\*The terms and conditions of this Proposed Decision and Order shall supersede conflicting provisions in the Petitioner's proposed alternative method.

\*Any party to this action desiring a hearing on this matter must file in accordance with 30 CFR 44.14, within 30 days, a request with the Administrator for Coal Mine Safety and Health, 4015 Wilson Boulevard, Arlington, Virginia 22203.

If a hearing is requested, the request shall contain a concise summary of position on the issues of fact or law desired to be raised by the party requesting the hearing, including specific objections to the proposed decision. A party other than Petitioner who has requested a hearing shall also comment upon all issues of fact or law presented in the petition, and any party to this action requesting a hearing may indicate a desired hearing site. If no request for a hearing is filed within 30 days after service thereof, the Decision and Order will become final and must be posted by the operator on the mine bulletin board at the mine.

Administrator

\_\_\_\_\_   
 for Coal Mine Safety and Health

Deputy

**Certificate of Service**

I hereby certify that a copy of this proposed decision was served personally or mailed, postage prepaid, this       day of       , 1989, to:

\*

\_\_\_\_\_  
MARY ANN GRIFFIN  
Mine Safety Clerk



Any party to this action desiring a hearing on this matter must file in accordance with 30 CFR 44.14, within 30 days, a request with the Administrator for Coal Mine Safety and Health, 4015 Wilson Boulevard, Arlington, Virginia 22203.

If a hearing is requested, the request shall contain a concise summary of position on the issues of fact or law desired to be raised by the party requesting the hearing, including specific objections to the proposed decision. A party other than Petitioner who has requested a hearing shall also comment upon all issues of fact or law presented in the petition, and any party to this action requesting a hearing may indicate a desired hearing site. If no request for a hearing is filed within 30 days after service thereof, the Decision and Order will become final and must be posted by the operator on the mine bulletin board at the mine.

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Deputy Administrator  
for Coal Mine Safety and Health

**Certificate of Service**

I hereby certify that a copy of this proposed decision was served personally or mailed, postage prepaid, this        day of        , 1989, to:

\*

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MARY ANN GRIFFIN  
Mine Safety Clerk