

§ 37.3

42 CFR Ch. I (10-1-02 Edition)

(j) *Preemployment physical examination* means any medical examination which includes a chest roentgenographic examination given in accordance with the specifications of this subpart to a person not previously employed by the same operator or at the same mine for which that person is being considered for employment.

(k) *Secretary* means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved may be delegated.

(l) *MSHA* means the Mine Safety and Health Administration, Department of Labor.

[43 FR 33715, Aug. 1, 1978, as amended at 49 FR 7563, Mar. 1, 1984]

§ 37.3 Chest roentgenograms required for miners.

(a) *Voluntary examinations.* Every operator shall provide to each miner who is employed in or at any of its underground coal mines and who was employed in underground coal mining prior to December 30, 1969, or who has completed the required examinations under § 37.3(b) an opportunity for a chest roentgenogram in accordance with this subpart:

(1) Following August 1, 1978 ALOSH will notify the operator of each underground coal mine of a period within which the operator may provide examinations to each miner employed at its coal mine. The period shall begin no sooner than the effective date of these regulations and end no later than a date specified by ALOSH separately for each coal mine. The termination date of the period will be approximately 5 years from the date of the first examination which was made on a miner employed by the operator in its coal mine under the former regulations of this subpart adopted July 27, 1973. Within the period specified by ALOSH for each mine, the operator may select a 6-month period within which to provide examinations in accordance with a plan approved under § 37.5.

Example: ALOSH finds that between July 27, 1973, and March 31, 1975, the first roentgenogram for a miner who was employed at mine Y and who was employed in underground coal mining prior to December 30,

1969, was made on January 1, 1974. ALOSH will notify the operator of mine Y that the operator may select and designate on its plan a 6-month period within which to offer its examinations to its miners employed at mine Y. The 6-month period shall be scheduled between August 1, 1978 and January 1, 1979 (5 years after January 1, 1974).

(2) For all future voluntary examinations, ALOSH will notify the operator of each underground coal mine when sufficient time has elapsed since the end of the previous 6-month period of examinations. ALOSH will specify to the operator of each mine a period within which the operator may provide examinations to its miners employed at its coal mine. The period shall begin no sooner than 3½ years and end no later than 4½ years subsequent to the ending date of the previous 6-month period specified for a coal mine either by the operator on an approved plan or by ALOSH if the operator did not submit an approved plan. Within the period specified by ALOSH for each mine, the operator may select a 6-month period within which to provide examinations in accordance with a plan approved under § 37.5.

Example: ALOSH finds that examinations were previously provided to miners employed at mine Y in a 6-month period from July 1, 1979, to December 31, 1979. ALOSH notifies the operator at least 3 months before July 1, 1983 (3½ years after December 31, 1979) that the operator may select and designate on its plan the next 6-month period within which to offer examinations to its miners employed at mine Y. The 6-month period shall be scheduled between July 1, 1983, and July 1, 1984 (between 3½ and 4½ years after December 31, 1979).

(3) Within either the next or future period(s) specified by ALOSH to the operator for each of its coal mines, the operator of the coal mine may select a different 6-month period for each of its mines within which to offer examinations. In the event the operator does not submit an approved plan, ALOSH will specify a 6-month period to the operator within which miners shall have the opportunity for examinations.

(b) *Mandatory examinations.* Every operator shall provide to each miner who begins working in or at a coal mine for the first time after December 30, 1969:

(1) An initial chest roentgenogram as soon as possible, but in no event later than 6 months after commencement of

employment. A preemployment physical examination which was made within the 6 months prior to the date on which the miner started to work will be considered as fulfilling this requirement. An initial chest roentgenogram given to a miner according to former regulations for this subpart prior to August 1, 1978 will also be considered as fulfilling this requirement.

(2) A second chest roentgenogram, in accordance with this subpart, 3 years following the initial examination if the miner is still engaged in underground coal mining. A second roentgenogram given to a miner according to former regulations under this subpart prior to August 1, 1978 will be considered as fulfilling this requirement.

(3) A third chest roentgenogram 2 years following the second chest roentgenogram if the miner is still engaged in underground coal mining and if the second roentgenogram shows evidence of category 1, category 2, category 3 simple pneumoconioses, or complicated pneumoconioses (ILO Classification).

(c) ALOSH will notify the miner when he or she is due to receive the second or third mandatory examination under (b) of this section. Similarly, ALOSH will notify the coal mine operator when the miner is to be given a second examination. The operator will be notified concerning a miner's third examination only with the miner's written consent, and the notice to the operator shall not state the medical reason for the examination nor that it is the third examination in the series. If the miner is notified by ALOSH that the third mandatory examination is due and the operator is not so notified, availability of the roentgenographic examination under the operator's plan shall constitute the operator's compliance with the requirement to provide a third mandatory examination even if the miner refuses to take the examination.

(d) The opportunity for chest roentgenograms to be available by an operator for purposes of this subpart shall be provided in accordance with a plan which has been submitted and approved in accordance with this subpart.

(e) Any examinations conducted by the Secretary in the National Study of Coal Workers' Pneumoconiosis after

January 1, 1977, but before August 1, 1978 shall satisfy the requirements of this section with respect to the specific examination given (see § 37.6(d)).

[43 FR 33715, Aug. 1, 1978; 43 FR 38830, Aug. 31, 1978, as amended at 49 FR 7563, Mar. 1, 1984]

§ 37.4 Plans for chest roentgenographic examinations.

(a) Every plan for chest roentgenographic examinations of miners shall be submitted on forms prescribed by the Secretary to ALOSH within 120 calendar days after August 1, 1978. In the case of a person who after August 1, 1978, becomes an operator of a mine for which no plan has been approved, that person shall submit a plan within 60 days after such event occurs. A separate plan shall be submitted by the operator and by each construction contractor for each underground coal mine which has a MSHA identification number. The plan shall include:

(1) The name, address, and telephone number of the operator(s) submitting the plan;

(2) The name, MSHA identification number for respirable dust measurements, and address of the mine included in the plan;

(3) The proposed beginning and ending date of the 6-month period for voluntary examinations (see § 37.3(a)) and the estimated number of miners to be given or offered examinations during the 6-month period under the plan;

(4) The name and location of the approved X-ray facility or facilities, and the approximate date(s) and time(s) of day during which the roentgenograms will be given to miners to enable a determination of whether the examinations will be conducted at a convenient time and place;

(5) If a mobile facility is proposed, the plan shall provide that each miner be given adequate notice of the opportunity to have the examination and that no miner shall have to wait for an examination more than 1 hour before or after his or her work shift. In addition, the plan shall include:

(i) The number of change houses at the mine.

(ii) One or more alternate nonmobile approved facilities for the reexamination of miners and for the mandatory examination of miners when necessary