

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

§ 37.5

examination of miners when necessary (see §37.3(b)), or an assurance that the mobile facility will return to the location(s) specified in the plan as frequently as necessary to provide for examinations in accordance with these regulations.

(iii) The name and location of each change house at which examinations will be given. For mines with more than one change house, the examinations shall be given at each change house or at a change house located at a convenient place for each miner.

(6) The name and address of the "A" or "B" reader who will interpret and classify the chest roentgenograms.

(7) Assurances that: (i) The operator will not solicit a physician's roentgenographic or other findings concerning any miner employed by the operator,

(ii) Instructions have been given to the person(s) giving the examinations that duplicate roentgenograms or copies of roentgenograms will not be made and that (except as may be necessary for the purpose of this subpart) the physician's roentgenographic and other findings, as well as the occupational history information obtained from a miner unless obtained prior to employment in a preemployment examination, and disclosed prior to employment, will not be disclosed in a manner which will permit identification of the employee with the information about him, and

(iii) The roentgenographic examinations will be made at no charge to the miner.

(b) Operators may provide for alternate facilities and "A" or "B" readers in plans submitted for approval.

(c) The change of operators of any mine operating under a plan approved pursuant to §37.5 shall not affect the plan of the operator which has transferred responsibility for the mine. Every plan shall be subject to revision in accordance with paragraph (d) of this section.

(d) The operator shall advise ALOSH of any change in its plan. Each change in an approved plan is subject to the same review and approval as the originally approved plan.

(e) The operator shall promptly display in a visible location on the bul-

42 CFR Ch. I (10-1-07 Edition)

letin board at the mine its proposed plan or proposed change in plan when it is submitted to ALOSH. The proposed plan or change in plan shall remain posted in a visible location on the bulletin board until ALOSH either grants or denies approval of it at which time the approved plan or denial of approval shall be permanently posted. In the case of an operator who is a construction contractor and who does not have a bulletin board, the construction contractor must otherwise notify its employees of the examination arrangements. Upon request, the contractor must show ALOSH written evidence that its employees have been notified.

(f) Upon notification from ALOSH that sufficient time has elapsed since the previous period of examinations, the operator will resubmit its plan for each of its coal mines to ALOSH for approval for the next period of examinations (see §37.3(a)(2)). The plan shall include the proposed beginning and ending dates of the next period of examinations and all information required by paragraph (a) of this section.

[43 FR 33715, Aug. 1, 1978; 43 FR 38830, Aug. 31, 1978]

§ 37.5 Approval of plans.

(a) Approval of plans granted prior to August 1, 1978 is no longer effective.

(b) If, after review of any plan submitted pursuant to this subpart, the Secretary determines that the action to be taken under the plan by the operator meets the specifications of this subpart and will effectively achieve its purpose, the Secretary will approve the plan and notify the operator(s) submitting the plan of the approval. Approval may be conditioned upon such terms as the Secretary deems necessary to carry out the purpose of section 203 of the act.

(c) Where the Secretary has reason to believe that he will deny approval of a plan he will, prior to the denial, give reasonable notice in writing to the operator(s) of an opportunity to amend the plan. The notice shall specify the ground upon which approval is proposed to be denied.

(d) If a plan is denied approval, the Secretary shall advise the operator(s) in writing of the reasons for the denial.