

§ 37.5

42 CFR Ch. I (10–1–12 Edition)

the bulletin board until NIOSH either grants or denies approval of it at which time the approved plan or denial of approval must 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 NIOSH written evidence that its employees have been notified.

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

§ 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.

EFFECTIVE DATE NOTE: At 77 FR 56728, Sept. 13, 2012, § 37.5 was revised, effective Oct. 15, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 37.5 Approval of plans.

(a) 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 § 203 of the Act.

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

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

§ 37.6 Chest roentgenographic examinations conducted by the Secretary.

(a) The Secretary will give chest roentgenograms or make arrangements with an appropriate person, agency, or institution to give the chest roentgenograms and with “A” or “B” readers to interpret the roentgenograms required under this subpart in the locality where the miner resides, at the mine, or at a medical facility easily accessible to a mining community or mining communities, under the following circumstances:

(1) Where, in the judgment of the Secretary, due to the lack of adequate medical or other necessary facilities or personnel at the mine or in the locality where the miner resides, the required roentgenographic examination cannot be given.

(2) Where the operator has not submitted an approvable plan.

(3) Where, after commencement of an operator’s program pursuant to an approved plan and after notice to the operator of his failure to follow the approved plan and, after allowing 15 calendar days to bring the program into compliance, the Secretary determines and notifies the operator in writing that the operator’s program still fails to comply with the approved plan.

(b) The operator of the mine shall reimburse the Secretary or other person, agency, or institution as the Secretary may direct, for the cost of conducting each examination made in accordance with this section.

(c) All examinations given or arranged by the Secretary will comply with the time requirements of § 37.3. Whenever the Secretary gives or arranges for the examinations of miners at a time, a written notice of the arrangements will be sent to the operator