

§ 37.3

42 CFR Ch. I (10–1–14 Edition)

other officer or employee of the Department of Health and Human Services to whom the authority involved may be delegated.

Soft copy means the image of a coal miner's chest radiograph acquired using a digital radiography system, viewed at the full resolution of the image acquisition system using an electronic medical image display device.

[77 FR 56726, Sept. 13, 2012, as amended at 79 FR 45118, Aug. 4, 2014]

§ 37.3 Chest radiographs required for miners.

(a) *Voluntary examinations.* Every operator must provide to each miner who is employed in or at any of its coal mines and who was employed in coal mining prior to December 30, 1969, or who has completed the required examinations under § 37.3(b) an opportunity for a chest radiograph at no cost to the miner in accordance with this subpart:

(1) NIOSH will notify the operator of each coal mine of a period within which the operator may provide examinations to each miner employed at its coal mine. The period must begin no sooner than October 15, 2012, and end no later than a date specified by NIOSH separately for each coal mine. Within the period specified by NIOSH for each mine, the operator may select a 6-month period within which to provide examinations in accordance with a plan approved under § 37.101.

(2) For all voluntary examinations, NIOSH will notify the operator of each coal mine when sufficient time has elapsed since the end of the previous 6-month period of examinations. NIOSH 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 must begin no sooner than 3.5 years and end no later than 4.5 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 NIOSH if the operator did not submit an approved plan. Within the period specified by NIOSH for each mine, the operator may select a 6-month period within which to provide examinations in accordance with a plan approved under § 37.101.

Example: NIOSH finds that examinations were previously provided to miners employed at mine Y in a 6-month period from July 1, 2013, to December 31, 2013. NIOSH notifies the operator at least 3 months before July 1, 2017 (3.5 years after December 31, 2013) 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 must be scheduled between July 1, 2017, and July 1, 2018 (between 3.5 and 4.5 years after December 31, 2013).

(3) Within either the next or future period(s) specified by NIOSH 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, NIOSH will specify a 6-month period to the operator within which miners must have the opportunity for examinations.

(b) *Mandatory examinations.* Every operator must provide to each miner who begins working in or at an underground coal mine for the first time after December 30, 1969 or in or at a surface coal mine for the first time after August 1, 2014:

(1) An initial chest radiograph, as soon as possible, but in no event later than 30 days after commencement of employment or within 30 days of approval of a plan to provide chest radiographs. An initial chest radiograph given to a miner according to former regulations for this subpart prior to August 1, 2014 will also be considered as fulfilling this requirement.

(2) A second chest radiograph, in accordance with this subpart, 3 years following the initial examination if the miner is still engaged in coal mining. A second radiograph given to a miner according to former regulations under this subpart prior to August 1, 2014 will be considered as fulfilling this requirement.

(3) A third chest radiograph 2 years following the second chest radiograph if the miner is still engaged in coal mining and if the second radiograph shows evidence of category 1 (1/0, 1/1, 1/2), category 2 (2/1, 2/2, 2/3), category 3 (3/2, 3/3, 3/+) simple pneumoconioses, or complicated pneumoconioses (ILO Classification) or if the second spirometry examination specified in

§ 37.92(b)(2) shows evidence of decreased lung function to the extent specified in § 37.92(b)(3).

(c) *Notification.* NIOSH will notify the miner when he or she is due to receive the second or third mandatory examination under (b) of this section. Similarly, NIOSH 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 must not state the medical reason for the examination or that it is the third examination in the series. If the miner is notified by NIOSH that the third mandatory examination is due and the operator is not so notified, availability of the radiographic examination under the NIOSH-approved operator's plan will constitute the operator's compliance with the requirement to provide a third mandatory examination even if the miner refuses to take the examination.

(d) *Availability of chest radiographs.* The opportunity for chest radiographs to be made available by an operator for purposes of this subpart must be provided in accordance with a plan that has been submitted and approved in accordance with this subpart.

[79 FR 45118, Aug. 4, 2014]

§ 37.4 Chest radiographic examinations conducted by the Secretary.

(a) The Secretary will give chest radiographs or make arrangements with an appropriate person, agency, or institution to give the chest radiographs and with A or B Readers to interpret the radiographs 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 radiographic 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 who shall post the notice on the mine bulletin board.

(d) Operators of mines selected by NIOSH to participate in the National Study of Coal Workers' Pneumoconiosis (an epidemiological study of respiratory diseases in coal miners) and who agree to cooperate will have all their miners afforded the opportunity to have a chest radiograph required hereunder at no cost to the operator. For future examinations and for mandatory examinations each participating operator must submit an approvable plan.

[43 FR 33715, Aug. 1, 1978, as amended at 77 FR 56728, Sept. 13, 2012. Redesignated and amended at 79 FR 45119, Aug. 4, 2014]

§ 37.10 Standards incorporated by reference.

(a) Certain material is incorporated by reference into this subpart, Subpart—Chest Radiographic Examinations, with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, NIOSH must publish notice of change in the FEDERAL REGISTER and the material must be available to the public. All approved material is available for inspection at NIOSH, Division of Respiratory Disease