



**Billing Code: 4520-43-P**

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**Petitions for Modification of Application of Existing Mandatory Safety Standards**

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This notice is a summary of four petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

**DATES:** All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. Electronic Mail: [zzMSHA-comments@dol.gov](mailto:zzMSHA-comments@dol.gov). Include the docket number of the petition in the subject line of the message.

2. Facsimile: 202-693-9441.

3. Regular Mail or Hand Delivery: MSHA, Office of Standards, Regulations, and Variances, 201 12<sup>th</sup> Street South, Suite 4E401, Arlington, Virginia 22202-5452, Attention: Roslyn B. Fontaine, Deputy Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

**FOR FURTHER INFORMATION CONTACT:** Aromie Noe, Office of Standards, Regulations, and Variances at 202-693-9557 (voice), Noe.Song-Ae.A@dol.gov (email), or 202-693-9441 (facsimile). [These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification.

## **I. Background**

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. 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
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements for filing petitions for modification.

## **II. Petitions for Modification**

Docket Number: M-2020-022-C.

Petitioner: Century Mining LLC, 200 Chapel Brook Drive, Bridgeport, West Virginia 26330.

Mine: Longview Mine, MSHA I.D. No. 46-09447, located in Barbour County, West Virginia.

Regulation Affected: 30 CFR 75.507-1 (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements.).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment including total station surveying equipment, distance meters, theodolites, and data loggers, in return air, outby the last open crosscut.

The petitioner states that:

(a) To support mining operations, specifically for accurately locating entries, bore holes, gas wells, and other features, mine surveying will be used. Accurate surveying is important for mine required ventilation maps in 30 CFR 75.372 and 75.1200. Surveying technology has advanced greatly in recent years, allowing for increased accuracy, which promotes miner safety. These new surveying systems are battery powered and are not MSHA-certified. For this equipment to be employed in the Longview mine, the petitioner has submitted this petition for modification of 30 CFR 75.507-1(a).

As an alternative to the existing standard, the petitioner proposes the following:

(a) The petitioner proposes to use battery operated transits, total station surveying equipment, distance meters and data loggers in return air, outby the last open crosscut. The petition proposes the use of theodolites and similar low-voltage battery-operated total stations and theodolites if they have an ingress protection (IP) rating of 66 or greater in the subject area, according to this petition.

(1) If the surveying equipment operates using lithium batteries, it must meet the battery safety standard: UL1642 or IEC 62133.

- (2) If an IP 66 rating is not possible, the highest IP rating will be used.
- (b) A record of the equipment will be kept on mine property in either a secure book or electronically in a secure computer where the records will not be alterable. The record will contain: the date of manufacture and/or the purchase information of each piece of survey equipment, proof of compliance with lithium battery standards, and the original equipment manufacturers' user and maintenance manuals. These records will be made available to MSHA and miners at the mine.
- (c) Survey equipment will be examined by a qualified person, as in 30 CFR 75.153, before the equipment is taken underground to ensure safe operating conditions. The minimum requirements of the examination by a qualified person are the following:
  - (1) Check the equipment for physical damage and the integrity of the case;
  - (2) Remove the battery and check for corrosion, if removable;
  - (3) Inspect the contact points to ensure a secure connection to the battery, if removable;
  - (4) Reinsert the battery, power up and shut down to ensure proper connections, if accessible;
  - (5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened; and
  - (6) For equipment utilizing lithium cells, the cells will be inspected to ensure they are not damaged or swelled in size.
- (d) A qualified person, as in 30 CFR 75.512-2, will examine the equipment weekly and record the results. Records will be maintained for at least one year.
- (e) The equipment will be serviced per the manufacturers' recommendation, dates of service and a description of any work performed will be recorded.

(f) Surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while such equipment is being used, the equipment will be de-energized immediately and withdrawn outby the last open crosscut. Batteries will not be removed to de-energize equipment due to the possibility of accidental short-circuiting. All requirements of 30 CFR 75.323 will be complied with prior to entering the subject area.

(g) A qualified person, as in 30 CFR 75.100, will conduct a visual examination of the location that the survey equipment will be used in before the equipment is taken into or energized in that area. The visual examination will include: evidence that the area is properly rock dusted and whether there is an accumulation of combustible material (such as float coal dust). If float coal dust is observed in suspension then the equipment cannot be energized until sufficient rock dusting has been applied and/or the combustible material has been cleaned up or removed.

(h) A methane test will be made at least 12 inches from the roof, face, ribs, and floor (under 30 CFR 75.323) before energizing equipment in the subject area.

(i) Hand-held methane detectors will be MSHA-approved as set forth by 30 CFR 75.320. Measurement devices will be calibrated or bump tested before each shift to ensure that they function properly. Methane detectors will provide visual and audible warnings when methane is detected above 1.0 percent.

(j) As required by 30 CFR 75.360, the subject area must be pre-shift examined before using surveying equipment. If not examined during the pre-shift, a supplemental examination will be conducted (under 30 CFR 75.361) before a noncertified person enters the subject area.

(k) Prior to survey equipment entering the subject area, a qualified person must confirm, either by measurement or inquiry of the certified person in charge of the section, that the air quantity meets the minimum quantity required by the mine's approved ventilation plan.

(l) Methane will be continuously monitored before and during the use of equipment in the subject area by a qualified person.

(m) Batteries must be "exchanged" in the intake area and no work will be performed on the equipment while in the subject area.

(n) Personnel using the equipment will be qualified, as in 30 CFR 75.153, and trained according to the manufacturer's recommended safe use procedures, including recognizing hazards associated with using equipment where methane could be present.

(o) The above non-permissible survey equipment will be used when production is occurring, if the following conditions are met:

(1) Nonpermissible electronic surveying equipment will not be used in a split of air ventilating an MMU if any ventilation controls will be disrupted during such surveying.

Disruption of ventilation controls means any change to the mine's ventilation system that causes the ventilation system not to function in accordance with the mine's approved ventilation plan.

(2) If a surveyor must disrupt ventilation while surveying, the surveyor will stop surveying and communicate to the section foreman that ventilation is disrupted. Production will stop while ventilation is disrupted. Ventilation controls will be reestablished immediately after the disruption is no longer necessary. Production will only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans, and other applicable laws, standards, or regulations.

(3) All surveyors, section foremen, section crew members, and other personnel who

will be involved with or affected by surveying operations will receive training in accordance with 30 CFR 48.7 on the requirements of the petition. The training will be completed before any nonpermissible electronic surveying equipment can be used while production is occurring. The petitioner will keep a record of the training and provide the record to MSHA on request.

(4) The petitioner will provide annual retraining to all personnel who will be involved with or affected by surveying operations in accordance with 30 CFR 48.8. The petitioner will train new miners on the requirements of the petition in accordance with 30 CFR 48.5, and will train experienced miners, as defined in 30 CFR 48.6, on the requirements of the petition in accordance with 30 CFR 48.6. The petitioner will keep a record of the training and provide the record to MSHA personnel on request.

(p) The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

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Docket Number: M-2020-023-C.

Petitioner: Century Mining LLC, 200 Chapel Brook Drive, Bridgeport, West Virginia 26330.

Mine: Longview Mine, MSHA I.D. No. 46-09447, located in Barbour County, West Virginia.

Regulation Affected: 30 CFR 75.507-1 (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements.).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of nonpermissible electronic testing and diagnostic equipment, in return air, outby the last open crosscut.

The petitioner states that:

(a) To support mining, electrical testing and diagnostic equipment is necessary. Modern mining equipment includes programmable logic controllers, which use digital signals from machine sensors to make decisions based on logic, to govern machine systems. To troubleshoot such modern systems, as required by 30 CFR 75.503, certain electronic tools are needed such as electronic tachometers. This electronic equipment includes: laptop computers to communicate with machine control systems; vibration, temperature, and electronic tachometers to support preventative and predictive maintenance to identify hazards; cable fault detectors and insulation testers (meggers), which identify and locate insulation failures in trailing cables, electric motors, and control cables with power removed; oscilloscopes to view machine control and communication signals for proper wave forms frequency and amplitude, removing improper control signals that can create hazards to mine personnel; voltage, current, resistance, and power test meters for troubleshooting that mining machines and systems are properly functioning. These electronic systems are not currently MSHA-certified and do not meet the requirements of 30 CFR 75.507-1(a). For this equipment to be employed in the Longview mine, the mine operator has submitted this petition for modification.

As an alternative to the existing standard, the petitioner proposes the following:

(a) The petitioner proposes using the following testing and diagnostic equipment in return air, outby the last open crosscut: laptop computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices, insulation testers (meggers), voltage, current, resistance meters, power testers, and electronic tachometers. Other testing and diagnostic equipment would also be used if approved in advance by MSHA's District Manager. The petitioner will use more than one piece of testing equipment at the same time.



- (b) Methane will be continuously monitored by a qualified person, as defined in 30 CFR 75.151, before and during the use of nonpermissible electronic testing and diagnostic equipment in return air, outby the last open crosscut.
- (c) Surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while such equipment is being used, the equipment will be de-energized immediately and withdrawn outby the last open crosscut.
- (d) Hand-held methane detectors will be MSHA-approved as set forth by 30 CFR 75.320. They will be maintained in permissible and proper operating condition.
- (e) Coal production will be halted, except for when it is necessary to troubleshoot under working mining conditions; coal can remain in or on the equipment to troubleshoot equipment underload. Production will be halted unless testing. Coal accumulation and other combustible materials, as in 30 CFR 75.400, will be removed prior to testing, as a safety precaution.
- (f) Nonpermissible testing and diagnostic equipment will not be used for testing when float coal dust is in suspension.
- (g) Testing and Diagnostic equipment will be used as recommended by the manufacturer, to ensure safe use procedures.
- (h) Miners who will use the above equipment will be trained to understand hazards and limitations associated with the equipment.
- (i) Equipment in this petition will be inspected by MSHA before it is put into service underground.
- (j) Cables used for powering low-voltage testing and diagnostic equipment will only be utilized when testing and diagnostic equipment is unavailable.

(k) The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

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Docket Number: M-2020-024-C.

Petitioner: Century Mining LLC, 200 Chapel Brook Drive, Bridgeport, West Virginia 26330.

Mine: Longview Mine, MSHA I.D. No. 46-09447, located in Barbour County, West Virginia.

Regulation Affected: 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility.)

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment including total station surveying equipment, distance meters, theodolites, and data loggers within 150 feet of pillar workings or longwall faces.

The petitioner states that:

As an alternative to the existing standard, the petitioner proposes the following:

(a) The petitioner proposes to use battery operated transits, total station surveying equipment, distance meters and data loggers within 150 feet of pillar workings or longwall faces. The petition proposes the use of theodolites and similar low-voltage battery-operated total stations and theodolites if they have an ingress protection (IP) rating of 66 or greater within 150 feet of pillar workings or longwall faces, subject to this petition.

(1) If the surveying equipment operates using lithium batteries, it must meet the battery safety standard: UL1642 or IEC 62133.

(2) If an IP 66 rating is not possible, the highest IP rating will be used.

(b) A record of the equipment will be kept on mine property in either a secure book or electronically in a secure computer where the records will not be alterable. The record will contain: the date of manufacture and/or the purchase information of each piece of survey equipment, proof of compliance with lithium battery standards, and the original equipment manufacturers' user and maintenance manuals. These records will be made available to MSHA and miners at the mine.

(c) Survey equipment will be examined by a qualified person, as in 30 CFR 75.153, before the equipment is taken underground to ensure safe operating conditions. The minimum requirements of the examination by a qualified person are the following:

(1) Check the equipment for physical damage and the integrity of the case;

(2) Remove the battery and check for corrosion, if removable;

(3) Inspect the contact points to ensure a secure connection to the battery, if removable;

(4) Reinsert the battery, power up and shut down to ensure proper connections, if accessible;

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened; and

(6) For equipment utilizing lithium cells, the cells will be inspected to ensure they are not damaged or swelled in size.

(d) A qualified person, as in 30 CFR 75.512-2, will examine the equipment weekly and record the results. Records will be maintained for at least one year.

(e) The equipment will be serviced per the manufacturers' recommendation, dates of service and a description of any work performed will be recorded.

(f) Surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while such equipment is being used, the equipment will be de-energized immediately and withdrawn outby the last open crosscut. Batteries will not be removed to de-energize equipment due to the possibility of accidental short-circuiting. All requirements of 30 CFR 75.323 will be complied with prior to entering the subject area.

(g) A qualified person, as in 30 CFR 75.100, will conduct a visual examination of the location that the survey equipment will be used in before the equipment is taken into or energized in that area. The visual examination will include: evidence that the area is properly rock dusted and whether there is an accumulation of combustible material (such as float coal dust). If float coal dust is observed in suspension then the equipment cannot be energized until sufficient rock dusting has been applied and/or the combustible material has been cleaned up or removed.

(h) A methane test will be made at least 12 inches from the roof, face, ribs, and floor (under 30 CFR 75.323) before energizing equipment in the subject area.

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(m) Batteries must be "exchanged" in the intake area and no work will be performed on the equipment while within the subject area.

(n) Personnel using the equipment will be qualified, as in 30 CFR 75.153, and trained according to the manufacturer's recommended safe use procedures, including recognizing hazards associated with using equipment where methane could be present.

(o) The above non-permissible survey equipment will be used when production is occurring, if the following conditions are met:

(1) Nonpermissible electronic surveying equipment will not be used in a split of air ventilating an MMU if any ventilation controls will be disrupted during such surveying.

Disruption of ventilation controls means any change to the mine's ventilation system that causes the ventilation system not to function in accordance with the mine's approved ventilation plan.

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(p) The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

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Docket Number: M-2020-025-C.

Petitioner: Century Mining LLC, 200 Chapel Brook Drive, Bridgeport, West Virginia 26330.

Mine: Longview Mine, MSHA I.D. No. 46-09447, located in Barbour County, West Virginia.

Regulation Affected: 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility.)

Modification Request: The petitioner requests a modification of the existing standard to permit the use of nonpermissible electronic testing and diagnostic equipment within 150 feet of pillar workings or longwall faces.

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- (b) Methane will be continuously monitored by a qualified person, as defined in 30 CFR 75.151, before and during the use of nonpermissible electronic testing and diagnostic equipment within 150 feet of pillar workings or longwall faces.
- (c) Surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while such equipment is being used, the equipment will be de-energized immediately and withdrawn from the area.
- (d) Hand-held methane detectors will be MSHA-approved as set forth by 30 CFR 75.320. They will be maintained in permissible and proper operating condition.
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- (g) Testing and Diagnostic equipment will be used as recommended by the manufacturer, to ensure safe use procedures.
- (h) Miners who will use the above equipment will be trained to understand hazards and limitations associated with the equipment.
- (i) Equipment in this petition will be inspected by MSHA before it is put into service underground.
- (j) Cables used for powering low-voltage testing and diagnostic equipment will only be utilized when testing and diagnostic equipment is unavailable.



(k) The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

**Roslyn Fontaine,**

*Deputy Director,*

*Office of Standards, Regulations, and Variances.*

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