



DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standard

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

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

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

ADDRESSES: You may submit comments identified by Docket No. MSHA-2023-0054 by any of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for MSHA-2023-0054.
2. *Fax:* 202-693-9441.
3. *Email:* petitioncomments@dol.gov
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, 4th Floor West, Arlington, Virginia 22202-5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West.

Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202-693-9455 to make an appointment, in keeping with the Department of Labor's COVID-19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202-693-9440 (voice), Petitionsformodification@dol.gov (email), or 202-693-9441 (fax). [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 (CFR) 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, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M-2023-025-C

Petitioner: Panther Creek Mining, LLC, 903 Dawes Hollow, Dawes, West Virginia 25054.

Mine: Winchester 2 Mine, MSHA ID No. 46-09615, located in Kanawha County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of 30 CFR 75.500(d) to permit the use of non-permissible battery-powered electronic surveying equipment in or inby the last open crosscut.

The petitioner states that:

- (a) The mine utilizes the continuous miner method of mining.
- (b) In order to comply with requirements of 30 CFR 75.372 and 30 CFR 75.1200, use of the most practical and accurate surveying equipment is necessary.
- (c) Mechanical surveying equipment has been obsolete for several years. Such equipment of acceptable quality is not commercially available. It is difficult to have such equipment serviced or repaired.
- (d) Battery-powered electronic surveying equipment is, at a minimum, 8-10 times more accurate than mechanical equipment.
- (e) Accurate surveying is critical to the safety of the miners at the Winchester 2 Mine.
- (f) Underground mining by its nature, size and complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. Use of electronic surveying equipment provides significant safety benefits.

The petitioner proposes the following alternative method:

- (a) Non-permissible electronic surveying equipment to be used includes:
 - (1) Topcom GM 52 Total Station
 - (b) The equipment used is low voltage or battery-powered non-permissible total stations and theodolites. All non-permissible electronic total stations and theodolites shall have an IP 66 or greater rating.
 - (c) The operator shall maintain a logbook for electronic surveying equipment with the equipment, or in the location where mine record books are kept, or in the location where the surveying record books are kept. The logbook shall contain the date of manufacture and/or purchase of each piece of electronic surveying equipment. The logbook shall be made available to MSHA upon request.
 - (d) All non-permissible electronic surveying equipment to be used in or inby the last open crosscut shall be examined by the person to operate the equipment prior to taking the equipment

underground to ensure the equipment is being maintained in safe operating condition. These examinations shall include:

- (1) Checking the instrument for any physical damage and the integrity of the case;
- (2) Removing the battery and inspecting for corrosion;
- (3) Inspecting the contact points to ensure a secure connection to the battery;
- (4) Reinserting the battery and powering up and shutting down to ensure proper connections; and
- (5) Checking the battery compartment cover or battery attachment to ensure that is securely fastened.

The results of this examination shall be recorded in the logbook.

(e) The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.153. The examination results shall be recorded weekly in the equipment's logbook.

These records shall be retained for 1 year.

(f) The operator shall ensure that all non-permissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Date of service shall be recorded in the equipment's logbook and shall include a description of the work performed.

(g) The non-permissible electronic surveying equipment to be used in or inby the last open crosscut shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the Proposed Decision and Order (PDO) granted by MSHA.

(h) Non-permissible electronic surveying equipment shall not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more of methane is detected while the non-permissible electronic surveying equipment is being used, the equipment shall be de-energized immediately and withdrawn outby the last open crosscut. All requirements of 30 CFR 75.323 shall be complied with prior to entering in or inby the last open crosscut.

(i) Before setting up and energizing non-permissible electronic surveying equipment in or inby the last open crosscut, the surveyor(s) shall conduct a visual examination of the immediate area for evidence that the area appears to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated float coal dust is observed, the non-permissible electronic surveying equipment shall not be energized until sufficient rock dust has been applied and/or the accumulations of float coal dust have been removed. If non-permissible electronic surveying equipment is to be used in an area that has not been rock-dusted within 40 feet of a working face where a continuous mining machine is used to extract coal, the area shall be rock-dusted prior to energizing the non-permissible electronic surveying equipment.

(j) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors shall provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) Prior to energizing any of the non-permissible electronic surveying equipment in or inby the last open crosscut, methane tests shall be made in accordance with 30 CFR 75.323(a).

(l) All areas to be surveyed must be pre-shifted according to 30 CFR 75.360 prior to surveying. If the area was not pre-shifted, a supplemental examination according to 30 CFR 75.361 shall be performed before any non-certified person enters the area. If the area has been examined according to 30 CFR 75.360 or 30 CFR 75.361, additional examination is not required.

(m) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of non-permissible electronic surveying equipment in or inby the last open crosscut. A second person in the surveying crew, if there are two people in the crew, shall also continuously monitor for methane. That person shall be a qualified person as defined in 30 CFR 75.151 or be in the process of being trained to be a qualified person but have yet to "make such tests for a period of 6 months" as required by 30 CFR 75.150. Upon completion of the 6-month training period, the second person on the surveying crew shall

become qualified to continue on the surveying crew. If the surveying crew consists of only one person, the person shall monitor for methane with two separate devices.

(n) Batteries contained in the non-permissible electronic surveying equipment shall be changed out or charged in intake air outby the last open crosscut. Replacement batteries for the non-permissible electronic surveying equipment shall be carried only in the electronic equipment carrying case spare battery compartment. Before each surveying shift, all batteries for the non-permissible electronic surveying equipment shall be charged sufficiently so that they are not expected to be replaced on that shift.

(o) When using non-permissible electronic surveying equipment in or inby the last open crosscut, the surveyor shall confirm by measurement or by inquiry of the person in charge of the section that the air quantity on the section, on that shift, in the last open crosscut is at least the minimum quantity required by the mine's ventilation plan.

(p) Personnel engaged in the use of non-permissible electronic surveying equipment shall be properly trained to recognize the hazards and limitations associated with the use of non-permissible electronic surveying equipment in areas where methane could be present.

(q) All members of the surveying crew shall receive specific training on the terms and conditions of the PDO granted by MSHA before using non-permissible electronic surveying equipment in or inby the last open crosscut. A record of the training shall be kept with the other training records.

(r) Within 60 days after the PDO granted by MSHA becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Coal Mine Safety and Health District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions of the PDO. When training is conducted on the terms and conditions of the PDO, a MSHA Certificate of Training (Form 5000-23) shall be completed and shall include comments indicating it was surveyor training.

(s) The operator shall replace or retire from service any non-permissible electronic surveying instrument acquired prior to December 31, 2004, within 1 year of the PDO granted by MSHA becomes final. Within 3 years of the date the PDO becomes final, the operator shall replace or retire from service any theodolite acquired more than 5 years prior to the date the PDO became final and any total station or other electronic surveying equipment identified in the PDO acquired more than 10 years prior to the date the PDO became final. After 5 years, the operator shall maintain a cycle of purchasing new electronic surveying equipment so that theodolites shall be no older than 5 years from the date of manufacture and total stations and other electronic surveying equipment shall be no older than 10 years from date of manufacture.

(t) The operator is responsible for ensuring that all surveying contractors hired by the operator use non-permissible electronic surveying equipment in accordance with the requirements of paragraph (s) of the PDO granted by MSHA. The conditions of use specified in the PDO shall apply to all non-permissible electronic surveying equipment used in or in by the last open crosscut, regardless of whether the equipment is used by the operator or by an independent contractor.

(u) Non-permissible surveying electronic surveying equipment may be used when production is occurring, subject to these conditions:

(1) On a mechanized mining unit (MMU) where production is occurring, non-permissible electronic surveying equipment shall not be used downwind of the discharge point of any face ventilation controls, such as tubing (including controls such as "baloney skins") or curtains.

(2) Production may continue while non-permissible electronic surveying equipment is used if the surveying equipment is used in a separate split of air from where production is occurring.

(3) Non-permissible electronic surveying equipment shall 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.

(4) If a surveyor must disrupt ventilation while surveying, the surveyor shall cease surveying and communicate to the section foreman that ventilation must be disrupted. Production shall stop while ventilation is disrupted. Ventilation controls shall be reestablished immediately after the disruption is no longer necessary. Production shall 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.

(5) Any disruption in ventilation shall be recorded in the logbook required by the PDO granted by MSHA. The logbook shall include a description of the nature of the disruption, the location of the disruption, the date and time of the disruption, the date and time the surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.

(6) All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations shall receive training in accordance with 30 CFR 48.7 on the requirements of the PDO granted by MSHA within 60 days of the date the PDO becomes final. Such training shall be completed before any non-permissible electronic surveying equipment can be used while production is occurring. The operator shall keep a record of such training and provide it to MSHA upon request.

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

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director,

Office of Standards, Regulations, and Variances.

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