SECTION 1

SUPERVISOR RESPONSIBILITY AND ACCOUNTABILITY

UNDER THE FEDERAL MINE ACT
Supervisor Responsibility & Accountability

1. Familiarize yourself with CFR 30 Part 56 (57 for underground).

2. Always keep the following in mind:

   a. Never willfully violate a regulation. You will be personally accountable and may receive large personal fines and jail time.

   b. If a question of legality arises, look up the standard or contact MSHA.

   c. Never falsify records required to be kept by MSHA. This may also result in large personal fines and jail time.

   d. Correct cited violations (follow inspectors recommended timetable.)

   e. Never allow a worker to break a safety rule or regulation. This is a willful violation and may result in large personal fines and jail time.

   f. Do not reward unsafe behavior. Rather, punish workers who violate safety rules. (You will need careful preplanning of step-by-step disciplinary procedures and communication of these procedures to employees).

3. Follow instructions in this section if you wish to contest a citation.
TRUE/FALSE – Mark an X in as many as apply

1. Larger mines pay higher MSHA fines than smaller mines for the same serious violation. T__, F____

2. Profitable mines pay higher MSHA fines than unprofitable for the same serious violations. T__, F____

3. Previous violation history does not affect amount of the fine for a serious violation. T___, F___

4. MSHA will not reduce the fine if the serious violation is corrected right away. T___, F___

5. The maximum fine for an S&S violation is $10,000. T___, F___

6. A missing guard where almost no one is likely to get hurt would result in a lower fine. T___, F___

7. An S&S violation is defined as a violation that is reasonably likely to result in serious injury or illness. T___, F___

8. MSHA considers an injury to be serious if it results in lost work days. T___, F___

9. MSHA can withdraw miners from a work area for the following reasons:
   1) Miner complains about discrimination. T___, F___
   2) Inspector finds a guard off moving machinery. T___, F___
   3) Inspector finds the brakes aren’t working properly on a loader. T___, F___
   4) An immediately-reportable accident has occurred in the area. T___, F___
   5) The last time the inspector was there, he found the fire extinguishers hadn’t been checked and the condition still exists. T___, F___
   6) The mine operator fails to produce the proper training certificates. T___, F___

10. MSHA can issue a withdrawal order for the following reasons:
    1) A cited violation is not corrected in a reasonable period of time? T ____ F ___
    2) Unwarrantable failure S&S violations are cited during two MSHA visits within 90 days. T ____, F __
    3) The finding of S&S violations on subsequent MSHA visits that are similar to the ones for which withdrawal orders in item 2 were issued. T ____, F __
    4) Finding an S&S violation within 90 days of issuing a written statement to the mine that a pattern of S&S violations exists. T ____, F __
    5) Finding an S&S violation on any subsequent visit after a withdrawal order has been issued for reasons given in item 4. T ____, F __

Ans. 1-8 -- TTFFFTTT, 9 -- FTTTTT, 10 -- TTTTT
Supervisor Responsibility and Accountability under the Mine Act

Definitions

- "Agent of the Company" means anyone responsible for operating all or a part of a mine, or anyone who supervises or directs miners (including hourly people.)
- "Knowingly" means knowing or having a reason to know. A supervisor has a reason to know about what he can legally ask his workers to do. He can be held liable even for unintentionally violating regulations that he should have known about as part of his job.
- "Willfully" means intentionally disobeying standards or recklessly disregarding them. Supervisors can be held liable for willfully violating regulations.
- "Unwarrantable Failure" is a term applied to S&S citations where a mine operator or one of his agents "knowingly" or "willfully" participated in the violation being cited. The finding of unwarrantable failure can trigger special investigations, including civil or criminal charges against the operator or his agents.

Penalties Imposed for Violations

Agents of the company may be penalized for violations they knowingly cause or allow. Civil penalties range from $55 to $55,000. The more serious violations are assessed using a formula that considers the mine's violation history, the business' size, mine operator negligence, the gravity of the violation, how swiftly the violation was corrected, and the penalty's effect on the business. Information supplied by supervisors helps determine these factors. In fatalities, etc., MSHA may make a special assessment.

- **S & S (Significant & Substantial) Violations**
  These violations are reasonably likely to result in a serious injury or illness. They are not eligible for the flat $55 penalty.

- **Orders of Withdrawal**
  MSHA orders the withdrawal of miners for 1) an imminent danger, 2) not correcting a violation on time, 3) accident investigations.

- **Unwarrantable Failure**
  A second unwarrantable failure violation occurring within 90 days of the first one triggers a withdrawal order. Continued similar violations will trigger more withdrawal orders.

- **Pattern of Violations**
  If MSHA determines a "pattern" of S&S violations, the mine is given a chance to improve compliance. If a pattern is assessed again, any S&S violation within 90 days triggers a withdrawal order.

- **Discrimination Protection**
  The law prohibits discrimination against miners, their representatives, or job applicants for exercising their safety and health rights.
• **Criminal Penalties**

Criminal sanctions (jail time) can be assessed against mine operators and agents who knowingly and willfully violate standards. MSHA turns appropriate cases over to the U.S. Justice Department.

**The Mine Act - Sections of Interest to Supervisors**

• **Section 103 – Accident Investigations, Reports, and Inspections**
  1. MSHA is required to make 4 inspections at underground and 2 at surface mines each year (1 at seasonal surface operations).
  2. Mine operators are required to investigate and record (for MSHA) all accidents to determine causes and means of prevention (Form 7000-1).
  3. A representative of the operator and one from the miners can accompany federal inspectors during inspections (including pre- and post-inspection conferences) without loss of pay.
  4. Any miner or their representative can contact MSHA and request an immediate inspection. The miner's names are kept confidential.

• **Section 104 - Citations and orders.**

MSHA is required to issue citations for violations and a withdrawal order can be issued if:
  1. 104(a) The general citation rule.
  2. 104(b) A citation not abated in the time allotted.
  3. 104(d)(1) Unwarrantable failure S&S violations are cited during two MSHA visits within 90 days.
  4. 104(d)(2) S&S violations are found on subsequent MSHA visits that are similar to the ones cited in item 2.
  5. 104(e)(1) S&S violation found within 90 days of a written statement that a pattern of S&S violations exists.
  6. 104(e)(2) S&S violation found on any subsequent visit after withdrawal order is issued for reasons in item 4.
  7. 104(g) Miners have not received required S&H training (miners will be paid until the violation is abated).

• **Section 105 - Procedures for Enforcement (procedures MSHA must follow)**

• **Section 106 - Judicial Review.**

Any person adversely affected by a decision of the Federal Mine Safety and Health Review Commission, may obtain a review of the decision by the US Court of Appeals for your region.

• **Section 107 - Procedures to Counteract Dangerous Conditions.**

107(a) If an MSHA inspector discovers an imminent danger, he can issue a withdrawal order.

• **Section 108 - Injunctions.**

This allows MSHA to initiate civil actions, such as temporary or permanent injunctions, against a mine operator, or an agent of the company, if they violate a provision of the Act.

• **Section 109 - Posting of Orders and Decisions.**

A copy of orders, citations, notices, or decisions required to be given to a mine shall be delivered to a representative of miners at the affected mine. A copy shall be posted on the mine bulletin board.
• **Section 110 – Penalties**
  1. 110(a) A civil penalties from $55 to $55,000 for each violation of a mandatory health or safety standard and for each occurrence of a particular violation.
  2. 110(b) Up to $5500 a day may be assessed for each day the failure or violation continues.
  3. 110(c) Subjects directors, officers and agents to similar penalties (see above) for violating standards or failure or refusal to comply with any order.
  4. 110(d) Operators willfully violating regulations or who refuse to comply with orders issued under sections 104 or 107 can be fined up to $250k and/or jailed for 1 year. Violations reviewed for 110(d) action include:
     a. 107(a) (imminent danger) order with 104(a) citation & high negligence.
     b. 104(d) (unwarrantable failure) with S&S and high negligence.
     c. Operator working against an order.
     d. District Manager prerogative.
  5. 110(e) Persons giving advance notice of inspections can be fined $1000 or jailed 6 months.
  6. 110(f) subjects person making false statements, representations, or certifications in any application, record, report, plan or other document required to be filed/maintained by MSHA to fines up to $250k, 5 yrs. jail, or both.
  7. 110(g) Miners in underground coal and underground gassy metal/nonmetal mines, who smoke or carry smoking materials, matches, or lighters into these mines, are subject to fines up to $275 for each violation. In surface mines or surface areas of underground mines where smoking could cause a fire or explosion, the restriction on ‘smoking materials’ doesn’t apply, but the restriction and fines for actually smoking does.
  8. 110(h) subjects anyone who knowingly distributes, sells, offers for sale, introduces, or delivers in commerce any mining equipment, accessories, etc., to fines up to $250k and imprisonment up to 5 years for falsely representing the equipment as complying with the requirements of the Act.
  9. 110(i) mandates that the inspector issue a citation for a violation of a mandatory safety and health standard (no inspector discretion is allowed.)

• **Section 115 – Training**
  Requires the various types of mine safety and health training.
Supervisor Responsibility & Accountability – Conferencing & Contesting Citations

Conferencing Citations - 30 CFR § 100.6

Mine inspectors may not see all of the circumstances surrounding a cited violation. MSHA gives mine operators and their employees several opportunities to bring up circumstances that could affect the citation or its penalty.

1. **During the inspection.** Point out any information missed or answer the inspector's questions.
2. **Closeout Conference.** Bring up any other pertinent information concerning the citations.
3. **MSHA Supervisory Conference.** You have 10 days within which to submit additional information or request a conference with the District Manager or his designee.
4. **Any time before citation is officially assessed.** Operators or miners' representatives can file an Immediate Contest. (See below).

Contesting Citations & Withdrawal Orders - 29 CFR § 2700

This is an abridged version of materials presented in the Mine Safety and Health News: Vol. 3, #7 - 04/05/96

**Immediate Contests**

If an enforcement action seems wrong or seems to forces unreasonable compliance costs on you, you may contest the following:

- A citation, withdrawal order, or imminent danger order.
- A subsequent modification of the citation or the order.
- The reasonableness of the abatement time specified in the citation.

Many companies consult with competent legal counsel when deciding to contest.

**When to file Immediate Contest** – You must file the contest within 30 days of the receipt of the citation, order, or modification of citation or order.

**Where to file** – File with the appropriate Regional Solicitor's Office of the Department of Labor, or the Solicitor's Headquarters Office at 4015 Wilson Blvd., Arlington, VA 22203. A copy should also be filed with the Commission at its Headquarters Office, 1730 K St., N.W., 6th Fl., Washington, DC 20006.

**What to file** – Make your own form and label it as "Contest." Date the document. Include your Company Name and other identifying information. Specify the action contested. Include a short statement that contains the following: 1) Issues of fact you disagree with. 2) Issues of law you disagree with. 3) The relief you are seeking. Attach legible copy of the citation or order contested.

**How to file** – File by "personal delivery." This includes courier service and registered or certified mail – return receipt requested.

**MSHA Secretary's Answer** – MSHA must file an answer to your contest within 20 days. For imminent danger orders, MSHA must file an answer within 15 days.

**Subsequent Citations or Orders** – Subsequent citations or orders that modify or terminate the original must be filed with the Commission within 30 days. If you don't, your original contest challenges all these subsequent citations/orders and you may not want to challenge something if it terminates the original citation or order.

**Effect of Failure to file Immediate Contest** – Not immediately contesting a citation or order does not prevent you from challenging in the subsequent civil penalty proceeding (see below). In this proceeding, you may challenge the fact of violation and any "special findings" such as S&S and Unwarrantable Failure.
Contesting Proposed Penalties

After a citation or withdrawal order is issued, MSHA must send you notification of the violation, the penalty proposed, and a notice of your right (within 30 days) to contest the penalty. This notification includes your "Green Card" for making such a contest.

When to Contest Proposed Penalties – Follow instructions on your Green Card and file it within 30 days of receipt of Notification of Proposed Penalty.

What to Contest – You may contest both the violation and the proposed penalty.

Effect of Failure to Contest – If you fail to file your Green Card, the proposed penalty shall be treated as a final order not subject to review.

The Secretary's Penalty Petition – After receiving your Green Card, MSHA must file a petition for assessment of civil penalty with the FMSHR Commission within 45 days.

Answering the Penalty Petition – Once the Secretary files his penalty petition, you must file an 'Answer' to it. Filing out a Green Card alone is not enough to preserve your contest.

When to File Answer – File Answer within 30 days of receipt of Penalty Petition.

Where to File Answer – File your Answer with the Commission's Headquarters Office, 1730 K Street, N.W., 6th Floor, Washington, D.C. 20006.

What to File – Make your own form and label it "Answer". Include your company's identifying information and date document prepared. Then include a short, plain response to all the allegations in MSHA's Penalty Petition. Include issues of fact you disagree with, issues of law you disagree with, and the relief you are seeking.

How to file Answer – File Answer by first class mail, express mail, or by courier service.