

Public Comment Submission

To: Docket No. MSHA–2025–0085/ RIN 1219-AC19

From: MSHA Safety Services, Inc./N-Compliance Safety Services, Inc.

Subject: Support for Proposed Revisions to 30 CFR Part 48 – Elimination of Discretionary District Manager Training Plan Authority

Date: 07/29/2025

Dear Deputy, Assistant Secretary James P. McHugh and MSHA Rulemaking Team,

I write in support of the proposed revisions to 30 CFR Part 48 that would eliminate the discretionary authority of District Managers to impose additional, undesignated training requirements on mine operators. This change is both **legally necessary** and **administratively sound**, and I encourage MSHA to finalize it with a strengthened evidentiary record.

I. Alignment with Legal Precedent – *International Union v. MSHA*

The D.C. Circuit in *International Union, UMWA v. MSHA*, 626 F.3d 84 (D.C. Cir. 2010), made clear that an agency's reliance on experience and discretion must be:

- **Documented,**
- **Explained,** and
- **Justified by evidence,**
to avoid being deemed “arbitrary and capricious” under the Administrative Procedure Act (APA).

MSHA’s current system—which allows District Managers to impose additional training plan content outside of formal rulemaking—**lacks such justification** and invites inconsistent enforcement and legal challenge. The proposed rescission corrects that deficiency by restoring conformity with the APA and the Mine Act.

II. Evidence of Harm from Discretionary Authority

I urge MSHA to expand the rulemaking record by including:

- Internal data or audits showing variation in District Manager practices,
- Operator feedback highlighting delays, costs, or confusion tied to ad hoc plan changes,
- Case examples (redacted if necessary) demonstrating enforcement inconsistency or litigation resulting from ambiguous training requirements.

Documenting these impacts will **reinforce the rule's necessity** and address potential legal scrutiny under *State Farm* and *International Union* standards.

Two examples of inconsistency recently:

- A contractor in California who had completed their training was withdrawn by the direction of the Assistant District Manager and required them to start their training over because they didn't know the minimum size requirement MSHA required for fire extinguishers at the mine.
- In Wyoming, a mine operator was cited on a plan that had been approved by MSHA since 2001, and the termination required the word HazCom to be deleted in two sections and added in two other sections. This was done without gathering any facts from the miners that would have revealed they were trained extensively in HazCom.

III. Public and Operator Benefits

Removing open-ended discretion over training plans will:

- Improve regulatory **predictability** and **efficiency**,
- Encourage more accurate and timely compliance,
- Avoid APA violations by ensuring all training mandates go through notice-and-comment rulemaking. The existing clauses letting District Managers demand "undesignated additions" effectively let MSHA add new, enforceable requirements without notice-and-comment. MSHA notes that such additions are tantamount to "promulgating new substantive rules...without any of the necessary process". By rescinding those clauses, the proposal ensures all substantive training requirements go through formal rulemaking.
- Reduce unnecessary operational delays due to plan resubmissions or post-approval enforcement surprises.

These outcomes support MSHA's mission while upholding miner protections grounded in clear, enforceable standards.

This should be applicable in all facets of MSHA enforcement. When I was being trained as an MSHA inspector at the Mine Academy, the instructors would end each course with "this is the law or these are the standards, but do what your District Manager says, not what you are trained on." This inconsistency has always been an issue within the agency, and how the standards are meted out throughout the United States and her Commonwealths.

IV. Conclusion

MSHA's proposed rule eliminates an unconstitutional delegation of regulatory power, addresses longstanding APA concerns, and promotes lawful, transparent administration of miner training standards.

I respectfully urge MSHA to finalize the rule and strengthen the record with factual evidence and field data, consistent with the D.C. Circuit's expectations in *International Union*.

Consistent training requirements throughout the industry will make miners safer and will ensure that there is more thorough training wherever the miners' work. Task training and Site-Specific Training are designed to meet those requirements.

Thank you for your leadership and for the opportunity to comment.

Sincerely,

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