



**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 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: Sheila McConnell, 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:** Barbara Barron, Office of Standards, Regulations, and Variances at 202-693-9447 (Voice), barron.barbara@dol.gov (E-mail), 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 (Secretary) 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. That 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 and procedures for filing petitions for modification.

## **II. Petitions for Modification**

Docket Number: M-2017-003-M.

Petitioner: Klondex Midas Operations, Inc., 13330 California Street, Suite 200, Omaha, Nebraska 68154.

Mine: Midas Mine, MSHA I.D. No. 26-02314, located in Elko County, Nevada.

Regulation Affected: 30 CFR 57.18025 (Working alone).

Modification Request: The petitioner requests a modification of 30 CFR 57.18025, (Working Alone standard) to the routine operation of jackleg drills at petitioner's Midas Mine.

For the reasons described below, the petitioner requests a modification of the application of the Working Alone standard to the extent that MSHA will permit jackleg drill operators to work alone so long as they do not encounter hazardous conditions above and beyond routine mining conditions. In addition, because MSHA's inconsistent application of the Working Alone standard to the petitioner's mines results in a diminution of safety, the petitioner requests that MSHA grant a modification from the Working Alone standard to allow miners to conduct routine jackleg drilling operations independently as they have in the past. Alternatively, the petitioner requests a modification of the Working Alone standard to accept the petitioner's proposed safety practices, described below, as an alternative and equally protective method of achieving the same result as the standard.

The petitioner states that:

(1) The petitioner owns and operates the Midas Mine, an underground narrow vein gold mine in Elko County, Nevada. It began operating Midas in early 2014. The

petitioner owns and operates the Fire Creek Mine, an underground narrow vein gold mine in Lander County, Nevada. Both companies' ultimate corporate parent is Klondex Mines Ltd.

Generally, the mining cycle at both mines involves a miner drilling holes in the face, loading those holes with explosives, blasting, mucking out the debris from the blasting, bolting the roof, and repeating the cycle by drilling holes again, this time in a face that is a few feet farther into the heading. For short periods of time during this cycle, the miner uses a jackleg drill for drilling holes in the face and to bolt the roof.

(2) The petitioner states that jackleg drills are a routine mining tool used safely every day. A jackleg drill is a widely-used portable rock drill designed for one-person operations. The single leg rests on the ground, secured into the mine floor with a "claw foot" that digs into the leveled floor. For drilling, it uses a long, smooth drill steel with a drill bit attached at the end. Compressed air powers the rotation and percussion of the drill steel and the up-and-down movement to extend or retract the pneumatic leg. A miner opens a throttle valve on the drill's main body to allow air to flow into the machine. The air not only drives the machine's operation but also flows through the steel and bit to prevent the bit from clogging with rock and dirt.

There is a safe and proper way to maintain and handle a jackleg drill. An experienced jackleg drill operator handles the drill in a way that requires less effort and poses little risk of serious injury. Experienced miners rarely pinch their fingers in the hinge where the drill's body meets its leg and do not wear loose clothing that could catch in moving parts. Proper drill positioning, examinations of ground conditions, and scaling prevent hazardous ground from falling when drilling up into the roof to bolt. Jackleg

drills have been used daily in many mines for decades. The petitioner trains its miners to operate jackleg drills safely and ensures its miners utilize the proper personal protective equipment (PPE) during all steps of the mining process.

(3) During a typical shift, miners use jackleg drills for short periods of time and are in frequent contact with others. Miners at the Klondex mines typically work 12-hour shifts. The first hour is typically spent attending a supervisor-led safety meeting where miners receive their crew assignments and work area assignments, and travel to the faces where they will work. The miners will typically stop mining and leave the work area to travel back to the surface 30 to 60 minutes before their shifts are complete.

Consequently, a miner will generally spend only 10 to 10½ hours of his or her shift actually performing mining work. Some of the miner's time is also spent away from the working face, to travel to the main heading or supply areas for supplies, to take periodic breaks, to offer assistance to others, or to eat lunch.

During his or her shift, a single miner will typically complete approximately one to two full mining cycles, depending on the amount of assistance the miner receives from others, as well as the conditions encountered during mining. Each shift hands off to the next shift; the miner will begin work starting at whatever point in the cycle the previous crew stopped.

While miners often work independently, they are rarely alone for long. Throughout a shift, various people will visit a miner at the face multiple times. For example, the crew supervisor ("foreman" or "shifter") is tasked with visiting each miner at least twice per shift and sometimes visits more often. While there, the supervisor reviews and signs the miner's workplace examination card. Geologists also usually visit

each heading at least once per shift, typically to take samples for assay and to paint the face before each round of blasting. Other miners, and sometimes the supervisor, may also stop by regularly to deliver bolting, blasting, and other supplies, as well as to muck out nearby muck bays.

(4) The petitioner has safety and training policies in place to ensure that miners approach potential hazards and handle equipment, such as drills, safely. Employees must follow petitioner's Employee Health and Safety Manual's requirements to protect against injuries while mining. For instance, miners must wear PPE equipment while operating a jackleg drill and may not wear loose, baggy, or ragged clothing. They must also keep their work areas neat and clean.

Furthermore, miners must evaluate their work area for hazards before they begin each task. When miners encounter a hazard, they must stop work, identify how to address or correct the hazard, report the hazard, and come up with a plan to address the hazard safely. Such a plan will require increased contact with others that is commensurate with the hazard or, if necessary, ceasing work in the area. Supervisors observe a miner's work area at least once daily and fill out a five-point safety card with each miner. This procedure further ensures that potential hazards are identified.

The petitioner's robust safety program also deals with all facets of operating jackleg drills and working alone. All miners must complete training and demonstrate core competencies before they operate a jackleg drill. Miners also receive annual refresher training, which includes topics relevant to drilling, such as keeping workplaces neat and orderly, performing workplace examinations, drilling with secure footing,

recognizing and addressing potentially hazardous ground conditions, avoiding pinch points, and responding to hazardous conditions.

(5) The petitioner states that the current communications with miners operating the jackleg drills fully comply with the standard.

The petitioner states that at its mines, a miner operates a jackleg drill for less than 33 percent of the miners' total shift time and that the miner has regular contact with others throughout the shift. Indeed, multiple individuals—supervisors, geologists, and fellow miners—visit the miner at the face, and the miner sees others when leaving the face multiple times each shift. The miner has further contact via mine phones and radios multiple times throughout the shift.

As stated above, miners are in regular contact with others throughout the mining cycle. Consequently, MSHA should modify the application of the Working Alone standard so that the petitioner's current level of communications easily meets the rule's legal standard, and miners may continue to work independently.

(6) The petitioner states that MSHA's requirement that miners use a jackleg drill in pairs results in a diminution of safety. It has been common practice within the mining industry for jackleg drill operators to work alone if there are not hazardous conditions present. The petitioner states however, that working in pairs reduces safety because the drill operator now not only must worry about handling and operating the drill safely for his own welfare, but must also worry about the whereabouts and exposure of the second person working with the drill operator.

(7) The jackleg drill is designed for one person to operate the machine. It is primarily intended for use where the size and configuration of the ore body or the mining

method do not permit large openings to be mined with heavier mechanized equipment. Both the petitioner's mines use jackleg drills precisely because of the relatively small size of the mining face. By requiring the introduction of another person into a small area during drill operation (as opposed to other purposes, such as bringing supplies or checking geology), the field operations becomes more crowded and complicated and the chance of injury necessarily increases, particularly because the second person is not in control of the drill. This is not unique to jackleg drills; it is a danger inherent any time the number of people increases in a small area working around mechanized equipment.

However, there may be circumstances under which a second person in the area could be helpful or, perhaps, even improve safety. The petitioner states that both the Working Alone standard, and the petitioner's safety protocols, account for such situations at petitioner's mines, if jackleg drill operators encounter hazardous conditions, they must seek assistance from their supervisors or a fellow miner and communicate in a manner that is commensurate with the hazard as the Working Alone standard requires. However, the petitioner states that MSHA's own data demonstrates that by requiring mines to "pair up" and work within a certain distance of each other no matter the circumstances, increases the safety risks to other miners.

The petitioner requests that MSHA grant a modification from the Working Alone standard to allow miners to conduct routine jackleg drilling operations independently as they have in the past because MSHA's application of the Working Alone standard to the petitioner's mines is actually less safe.

(8) In the alternative, the petitioner seeks modification of the Working Alone standard to permit miners working alone as long as they follow a new communications

policy that will help achieve the same result as the standard intends with the same or better protection. The petitioner seeks a modification of the standard that would permit underground miners to work alone, including operating jackleg drills, so long as the miners notifies a dispatcher or other designated contact person before beginning each stage of the mining cycle.

The petitioner states that its proposed alternative is at least as safe as the Working Alone standard. By requiring its miners to report in to a dispatcher or other designated contact at the beginning of each of the four stages of the mining cycle, such a protocol adds yet one more layer of communication and regular, dependable contact between the miner and others. Combined with the regular visits each underground miner receives from other miners, geologists, and his or her supervisor throughout a shift, as well as the miner's own travels away from the face to access supplies and equipment, such an approach reinforces that miners performing routing mining activity are adequately protected.

(9) The petitioner asserts that application of the standard will result in a diminution of safety to the miners and that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M-2017-004-M.

Petitioner: Klondex Gold and Silver Mining Company, 13330 California Street, Suite 200, Omaha, Nebraska 68154.

Mine: Fire Creek Mine, MSHA I.D. No. 26-02691, located in Lander County, Nevada.

Regulation Affected: 30 CFR 57.18025 (Working alone).

Modification Request: The petitioner requests a modification of 30 CFR 57.18025, (Working Alone standard) to the routine operation of jackleg drills at petitioner's Fire Creek Mine.

For the reasons described below, the petitioner requests a modification of the application of the Working Alone standard to the extent that MSHA will permit jackleg drill operators to work alone so long as they do not encounter hazardous conditions above and beyond routine mining conditions. In addition, because MSHA's inconsistent application of the Working Alone standard to the petitioner's mines results in a diminution of safety, the petitioner requests that MSHA grant a modification from the Working Alone standard to allow miners to conduct routine jackleg drilling operations independently as they have in the past. Alternatively, the petitioner requests a modification of the Working Alone standard to accept the petitioner's proposed safety practices, described below, as an alternative and equally protective method of achieving the same result as the standard.

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Generally, the mining cycle at both mines involves a miner drilling holes in the face, loading those holes with explosives, blasting, mucking out the debris from the blasting, bolting the roof, and repeating the cycle by drilling holes again, this time in a

face that is a few feet farther into the heading. For short periods of time during this cycle, the miner uses a jackleg drill for drilling holes in the face and to bolt the roof.

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There is a safe and proper way to maintain and handle a jackleg drill. An experienced jackleg drill operator handles the drill in a way that requires less effort and poses little risk of serious injury. Experienced miners rarely pinch their fingers in the hinge where the drill’s body meets its leg and do not wear loose clothing that could catch in moving parts. Proper drill positioning, examinations of ground conditions, and scaling prevent hazardous ground from falling when drilling up into the roof to bolt. Jackleg drills have been used daily in many mines for decades. The petitioner trains its miners to operate jackleg drills safely and ensures its miners utilize the proper personal protective equipment (PPE) during all steps of the mining process.

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Sheila McConnell,  
Director,  
Office of Standards, Regulations, and Variances.

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