

**DEPARTMENT OF LABOR****Mine Safety and Health Administration****30 CFR Parts 48 and 75**

RIN 1219 AB33

**Emergency Evacuations; Emergency Temporary Standard****AGENCY:** Mine Safety and Health Administration.**ACTION:** Emergency temporary standard for underground coal mines.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) is issuing an emergency temporary standard (ETS) under section 101(b) of the Federal Mine Safety and Health Act of 1977 (Mine Act) in response to the grave danger which miners are exposed to during mine fire, explosion, and gas or water inundation emergencies. The recent deaths of 14 miners at two underground coal mines confirm that miners working underground are exposed to grave danger during mine emergencies and demonstrate the need for MSHA to address proper training and mine emergency evacuation procedures in an ETS.

This ETS requires operators of underground coal mines to designate, for each shift that miners are working underground, a responsible person in attendance at the mine to take charge during mine fire, explosion, and gas or water inundation emergencies. In order to make an informed decision regarding an evacuation, this ETS also requires that the designated responsible person have current knowledge of various mine systems that protect the safety and health of miners.

In addition, this ETS requires the responsible person to initiate and conduct an immediate mine evacuation when there is a mine emergency which presents an imminent danger to miners due to fire, explosion, or gas or water inundation. This ETS further provides that only properly trained and equipped persons essential to respond to the mine emergency may remain underground.

This ETS also broadens the existing requirements for a program of instruction for firefighting and evacuation to address fire, explosion, and gas or water inundation emergencies. Under this ETS, operators must adopt a program of instruction which incorporates mine fire, explosion, and gas or water inundation emergencies into existing approved firefighting and evacuation plans and must train miners in those procedures. Finally, this ETS revises the part 48 training requirements to reflect that

annual refresher training includes a review of mine fire, explosion, and gas or water inundation emergency evacuation and firefighting plans in effect at the mine.

**DATES:** This ETS is effective on December 12, 2002. Submit comments on this ETS on or before January 13, 2003. Public hearings will be held at 9 a.m. on February 4, 6, 11, and 13, 2003. The post-hearing comment period will close on February 28, 2003.

**ADDRESSES:** Comments must be clearly identified as such and transmitted either electronically to [comments@msha.gov](mailto:comments@msha.gov), by facsimile to (202) 693-9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209-3939. You may contact MSHA with any format questions. Comments are posted for public viewing at <http://www.msha.gov/currentcomments.htm>.

**Information Collection Requirements:** Send written comments on the information collection requirements to both the Office of Management and Budget (OMB) and MSHA as follows:

(1) *To OMB:* If under 10 pages, by facsimile (202) 395-6974 to Attn: Desk Officer for MSHA. All comments may be sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for MSHA; and

(2) *To MSHA:* Comments must be clearly identified as comments on the information collection requirements and transmitted either electronically to [comments@msha.gov](mailto:comments@msha.gov), by facsimile to (202) 693-9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209-3939.

**Hearings:** (1) The hearing on Tuesday, February 4, 2003, will be held at the Holiday Inn Lexington—North, 1950 Newton Pike, Lexington, Kentucky, 40511 (phone: 859-233-0512).

(2) The hearing on Thursday, February 6, 2003, will be held at the Holiday Inn Grand Junction, 755 Horizon Drive, Grand Junction, Colorado, 81506 (phone: 970-243-6790).

(3) The hearing on Tuesday, February 11, 2003, will be held at the India Center, 800 Green Road South, Charleston, West Virginia, 25309 (phone: 304-744-0021).

(4) The hearing on Thursday, February 13, 2003, will be held at the Hyatt Regency, Pittsburgh International Airport, 1111 Airport Blvd. 15231 (phone: 724-899-1234).

**FOR FURTHER INFORMATION CONTACT:** Marvin W. Nichols, Director; Office of Standards, Regulations, and Variances, MSHA; phone: (202) 693-9440; facsimile: (202) 693-9441; E-mail: [nichols-marvin@msha.gov](mailto:nichols-marvin@msha.gov). You can view comments filed on this rulemaking at <http://www.msha.gov/currentcomments.htm>.

**SUPPLEMENTARY INFORMATION:** This ETS is issued in accordance with section 101(b) of the Mine Act, 30 U.S.C. 811. This ETS is effective immediately. The ETS establishes two new standards in subpart P, section 75.1501 Emergency Evacuations, and section 75.1502 Mine Emergency Evacuation and Firefighting Program of Instruction. Subpart P is renamed "Subpart P—Mine Emergencies." In addition, existing part 48, subpart A, section 48.8 is revised.

In accordance with section 101(b)(3) of the Mine Act, this ETS will also serve as the Agency's proposed rule. The preamble discusses specific provisions that may be included in the final rule and MSHA solicits comments on these provisions.

New section 75.1501 establishes that an operator must designate a responsible person to take charge in the event of a mine emergency which presents an imminent danger to miners involving a fire, explosion, or gas or water inundation. Section 75.1501 also requires that miners need to be trained about the requirements of this section.

New section 75.1502 revises redesignated section 75.1101-23 by including all mine emergencies created as a result of a fire, an explosion, or a gas or water inundation, requires revisions to existing firefighting and evacuation plans to address these emergencies, requires training of miners regarding the mine emergency evacuation and firefighting plan, and requires that mine operators train miners in any revisions to the plan after its submission to MSHA for approval.

**I. Basis for the Emergency Temporary Standard****A. Regulatory Authority**

Section 101(b) of the Mine Act provides that:

(1) The Secretary shall provide, without regard to the requirements of chapter 5, title 5, United States Code, for an emergency temporary mandatory health or safety standard to take immediate effect upon publication in the **Federal Register** if [s]he determines (A) that miners are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful, or to other hazards, and (B) that such emergency standard is necessary to protect miners from such danger.

(2) A temporary mandatory health or safety standard shall be effective until superseded by a mandatory standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the **Federal Register**, the Secretary shall commence a proceeding in accordance with section 101(a), and the standards as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a mandatory health or safety standard under this paragraph no later than nine months after publication of the emergency temporary standard as provided in paragraph (2).

Issuance of an ETS is an extraordinary measure provided for by the Mine Act to enable MSHA to "react quickly to grave dangers which threaten miners before those dangers manifest themselves in serious or fatal injuries or illnesses." S. Rept. 181, 95th Cong., 1st Sess. 23 (1977). The language authorizing the issuance of a temporary mandatory standard for these purposes indicates that it is appropriate to address miner exposure to "other hazards," as well as toxic substances or harmful agents. This broad scope is further indicated in the legislative history, which states that "[t]o exclude any kind of grave danger would contradict the basic purpose of emergency temporary standards—protecting miners from grave dangers." *Id.* The suggestion that a temporary mandatory standard is limited to new dangers in the mining industry is also dispelled in the legislative history which explains: "That a danger has gone unremedied should not be a bar to issuing an emergency standard. Indeed, if such is the case, the need for prompt action is that much more pressing." *Id.* In addition, the legislative history emphasizes that a record of fatalities or serious injuries is not necessary before an ETS can be issued because "[d]isasters, fatalities, and disabilities are the very thing this provision is designed to prevent." "Waiting until those dangers manifest themselves as fatalities or disabling injuries or illnesses, frustrates the purpose of this [ETS] provision." *Id.* at 23–24.

#### *B. Grave Danger*

In response to the recent accidents of September 2001 at the Jim Walter Resources No. 5 Mine and of July 2000 at the Willow Creek Mine described elsewhere in this preamble, MSHA has determined that new safety standards are necessary to further protect miners when a mine emergency presenting an imminent danger to miners due to fire, explosion, or gas or water inundation occurs which requires an evacuation of miners. Miners and mine operators must

be able to rapidly and safely respond to emergency situations created by fire, explosion, or gas or water inundation hazards, and initiate an immediate mine evacuation when necessary to protect miners from the grave dangers of remaining underground or re-entering affected areas when hazards and conditions arise that endanger safety. A rapid and planned evacuation of all miners, who are knowledgeable about the mine's plan for mine emergencies, is essential to survival, and is one of the last safeguards that would allow miners to exit from the mine under extremely adverse conditions. The current lack of such knowledge and demonstrated inability to quickly initiate and properly conduct a mine evacuation, presents a grave danger to miners who work in underground coal mines when a mine fire, explosion, or gas or water inundation emergency occurs.

Miners who are not directed to leave the scene of a mine emergency and who do not have knowledge about the mine's emergency evacuation and firefighting plan face serious physical injury or death from the hazards detailed below.

Underground coal mines are dynamic work environments where the working conditions can change rapidly. Diligent compliance with safety and health standards and safety conscious work habits provide a substantial measure of protection against the occurrence of fire and explosions and resultant mine emergencies underground. In the high hazard work environment of underground coal mines, however, the danger of a deadly fire, explosion, or gas or water inundation hazard which can develop into a mine emergency is always present. For example, electricity or other sources of power can ignite methane gas or coal dust resulting in an explosion. Mining equipment can also be the source of a deadly fire that may involve fuel, lubricants and the surrounding coal. Caved, mined out areas which contain coal and accumulated gas can be the locations for explosions caused by rock falls, and in some instances, fires are started by spontaneous combustion. Moreover, when active mines are connected into previously mined-out areas, there is also the risk of exposure to an oxygen deficient atmosphere that can cause asphyxiation. Finally, when mining near other mined out areas, there may be a risk of water inundation.

MSHA standards are designed to prevent these types of hazards, but mine emergencies can and do occur after these hazards develop. The existence and development of mine emergencies is unpredictable. Underground coal mine emergencies can quickly expand

from hazards presented in one isolated mining section to involve the entire coal mine.

The Secretary has therefore determined that miners are exposed to grave danger when they remain underground or re-enter affected mine areas at the time of a mine emergency which presents an imminent danger to miners due to fire, explosion, or gas or water inundation, without a responsible person at the mine initiating and conducting a mine evacuation. In addition, without timely knowledge, information and training about a mine's emergency evacuation and firefighting program of instruction specifically developed to cover mine fire, explosion, or gas or water inundation emergencies, miners are exposed to a grave danger because they are not prepared to take immediate action to evacuate the mine in the event of such a mine emergency.

## **II. Discussion of the Emergency Temporary Standards**

### *A. Background*

During the past three years, at least 14 miners have died in two accidents as a result of faulty mine evacuations.

Explosions at the Jim Walter Resources, Inc. No. 5 Mine on September 23, 2001, resulted in 13 fatalities. An initial roof fall and explosion occurred at 5:20 p.m. and resulted in injuries to four miners. One of the four miners was severely injured and could not be moved. Miners from other parts of the mine responded in an uncoordinated effort. In addition, the CO Room operator (monitoring the carbon monoxide monitoring system at the mine) after being notified about the explosion, attempted to locate the afternoon shift haulage foreman who he believed was working at the mine. This foreman was not working that shift. There was also some confusion about where the first explosion occurred.

By the time the second explosion occurred at 6:15 p.m., 12 additional miners headed towards the accident site and eight of those miners entered the affected area without gas detection equipment. Seven additional miners were directed to travel to the emergency area. The 6:15 p.m. explosion occurred before those seven additional miners arrived in the area affected by the second explosion. It is uncertain whether the miner immobilized by the first explosion died as a result of the first or second explosion. It is certain, however, that 12 miners died when the second explosion occurred as they were attempting to reach the injured miner.

MSHA's accident investigation report determined that in addition to not

following proper evacuation procedures after the initial explosion, there was never a mine wide evacuation initiated at the mine, even after an explosion damaged critical ventilation controls. MSHA's accident investigation team found that gas detection equipment was not found on any of the miners or during the underground investigation in the affected section where the explosion occurred. Gas detection equipment is essential to determine the composition of the mine atmosphere and secure the safety of those entering unknown atmospheres especially when ventilation controls are damaged. MSHA's accident investigation report concluded that the lack of training and the failure to conduct fire and emergency drills relative to proper evacuation procedures "affected the miners' response" to the emergency situation of September 2001.

After careful review of this accident, MSHA has determined that had a designated responsible person knowledgeable about the mine safety systems taken charge of the evacuation and rescue effort, fewer miners would have been permitted to remain underground or re-enter the affected mine area during the mine emergency.

Under this ETS, all 32 miners underground at the mine who were not essential to an immediate response to the explosion would have been immediately evacuated from the mine. In addition, the designated person would have assured that the miners attempting a rescue were equipped with gas detection equipment. Moreover, miners would have understood from mine emergency evacuation and firefighting training that an evacuation was necessary and that they were not to re-enter the emergency areas without instruction and appropriate safety equipment.

On July 31, 2000, four explosions occurred at the Willow Creek mine. The initial explosion and subsequent fire occurred approximately seven minutes before the later explosions which killed two miners. Although firefighting activities began almost immediately after the first explosion, evacuation procedures did not begin immediately and conditions worsened before the fatal explosions occurred. After careful review of the accident, MSHA has determined that had the decision to evacuate been made sooner, *i.e.*, after it became evident that the fire was not controllable, and had the individuals present at the affected mine section been more aware of the urgent need for evacuation under emergency conditions, the fatalities might not have occurred. Some miners at the mine were equipped

with personal emergency devices (PEDs) which are capable of carrying text messages to underground personnel. Many miners had evacuated the mine but these devices alerted the remaining miners to evacuate the mine. The message to evacuate, however, was not transmitted until after the third of four explosions occurred.

MSHA is also aware of two water inundations and one gas inundation where miners died. In 1968 in Hominey Falls, West Virginia, four miners died from a water inundation involving old workings and 21 miners were rescued. In Tower City, Pennsylvania in 1977 at Porter Tunnel, water from old workings injured one miner, entrapped one miner and resulted in nine fatalities. Finally, in 1978 at Moss #3 Mine in Duty, West Virginia, blackdamp (atmosphere depleted of oxygen) from old workings resulted in 5 fatalities.

#### *B. Section-by-Section Discussion*

##### Section 75.1501 Emergency Evacuations

Section 75.1501 is a new section which addresses mine emergency evacuations. Paragraph (a) provides that for each shift that miners work underground the mine operator shall designate a responsible person in attendance at the mine to take charge during mine fire, explosion, or gas or water inundation emergencies which present an imminent danger to miners. Paragraph (a) further provides that the designated responsible person shall have current knowledge of the assigned location and expected movements of miners underground, the operation of the mine ventilation system, the location of the mine escapeways, the mine communications system, any mine monitoring system if used, and the mine emergency evacuation and firefighting program of instruction. The purpose of these requirements is to ensure that during mine emergencies an informed decision is made by one responsible person regarding responses to mine emergencies, and that mine evacuations be conducted rapidly, efficiently, and safely. The accidents described in the background section to this preamble demonstrate the need for a designated person to take charge during mine emergencies.

In taking charge during an emergency, the designated person directs resources that may be required during the emergency and assures that all nonessential miners are evacuated safely. In addition, requiring that the designated responsible person be at the mine site during all shifts when miners are underground assures that no delays

result from off-site telephone calls requesting instructions.

Furthermore, requiring that the designated responsible person have current knowledge of the aforementioned elements assures that informed decisions are made during a mine emergency. For example, having knowledge of the work areas and the assigned locations of miners and their movement during the work shift allows miners working in remote locations where electronic communication may not be readily available to be notified of an evacuation as soon as possible. The designated responsible person will be aware of their presence and location underground. Formal procedures may be needed to assure that the responsible person can quickly locate all underground miners.

Paragraph (b) of new section 75.1501 requires that the designated responsible person initiate and conduct an immediate mine evacuation when there is a mine emergency which presents an imminent danger to miners due to fire, explosion, or gas or water inundation. Paragraph (b) further provides that only properly trained and equipped persons essential to respond to the mine emergency may remain underground.

Although the MSHA standards have been successful in addressing hazards and reducing risks created by fires, explosions, and gas or water inundations, MSHA has determined that this ETS is necessary. Miners are exposed to grave danger when they remain underground or re-enter affected mine areas during mine emergencies which present an imminent danger to miners. In addition, MSHA understands that not every mine fire, explosion, or gas or water inundation hazard listed above may result in a mine emergency. For example, only unplanned mine fires not extinguished within 30 minutes of discovery are reportable to MSHA under 30 CFR part 50. Such fires may not endanger miners and therefore may not constitute a mine emergency. It is when the hazards listed above present an imminent danger to miners that MSHA expects that an immediate mine evacuation be initiated.

MSHA notes that the term "imminent danger" is defined in the Mine Act, Section 3(j). It means, "the existence of any condition or practice in a coal or other mine which can be expected to cause death or serious physical harm before such condition or practice can be abated." This definition is well known and provides readily understandable criteria for the responsible person to decide to initiate a mine evacuation. To protect miners from the grave danger of remaining underground at that time, a

designated responsible person must be present to initiate and conduct an immediate evacuation and must assure that only persons who are properly trained and equipped and essential to respond to the mine emergency remain underground.

Paragraph (c) of new section 75.1501 requires the operator to instruct all miners about the requirements of this section and the identity of the responsible person designated by the operator for their workshift within 7 days of publication of this ETS. Paragraph (c) further provides that the mine operator must instruct miners of any change in the identity of the responsible person before the start of their workshift. MSHA has determined that this provision is necessary because, in order for a mine evacuation to be conducted without exposing miners to grave danger, miners need up-to-date information concerning mine emergency evacuations and the identity of the person or persons in charge of initiating and conducting such evacuations. The tragic accident at the Jim Walter No. 5 Mine shows that at least one miner with access to mine wide communications did not know which foreman was working the shift when the accident occurred and valuable time may have been lost while trying to locate that foreman.

Paragraph (d) of new section 75.1501 provides that the ability of any person to warn of an imminent danger which warrants an evacuation is not restricted by the provisions of section 75.1501. This provision is intended to recognize that there will be circumstances of imminent danger warranting a warning by someone other than the designated responsible person under section 75.1501(b). For example, at the Quecreek Mine inundation accident which occurred July 24, 2002, miners from the affected section rapidly warned miners in the other working section of a water inundation, enabling them to escape the mine unharmed. These actions are consistent with the approach of this paragraph (d) which recognizes that any person may warn others of an imminent danger. Had any delays occurred at Quecreek in warning the miners, tragic results might have ensued.

MSHA is soliciting comments on broadening the coverage of this section to include outbursts, massive roof falls, or other occurrences, for example the failure of a mine system designed to protect miner safety and health such as the ventilation control system, roof control system, or the mine communication system.

#### Section 75.1502—Mine Emergency Evacuation and Firefighting Program of Instruction

New Section 75.1502(a) requires that each operator of an underground coal mine adopt a mine emergency evacuation and firefighting program and begin training in those procedures as soon as possible but in no event not to exceed 30 days from the date of publication of this ETS. In addition, the program must be submitted to the District Manager of the Coal Mine Health and Safety District in which the mine is located for approval. Before any revision to the program is implemented, persons affected by the revision must be instructed on the revised provision.

The existing standard regarding evacuation procedures, section 75.1101-23, is located in subpart L. MSHA has determined that existing section 75.1101-23 should be redesignated as new section 75.1502 in subpart P and revised. New section 75.1502 focuses attention on safe evacuation procedures to be followed in the event of a fire, explosion, or gas or water inundation emergency.

Paragraph (a) of new section 75.1502 of this ETS revises and replaces redesignated section 75.1101-23(a). Under new paragraph (a), MSHA has expanded the existing program of instruction to include the proper evacuation procedures in the event of a mine emergency. This change reflects MSHA's determination that under the existing standards, miners are exposed to a grave danger caused by a mine emergency due to fire, explosion, or gas or water inundation. In addition, paragraph (a) of new section 75.1502 retains the requirements of existing section 75.1101-23(a) that the program of instruction include procedures to be followed regarding the location and use of firefighting equipment, location of escapeways, exits, and routes of travel to the surface.

Like existing section 75.1101-23, new section 75.1502 of this ETS provides a requirement for training of all miners in the proper evacuation procedures to be followed in the event of a mine emergency, the location and use of firefighting equipment, the location of escapeways, exits, and routes of travel to the surface. The training under section 75.1502 must begin as soon as possible but in no event later than 30 days from the date of publication of this ETS. Training is necessary to acquaint all miners with the emergency evacuation procedures for all mine emergencies which endanger miners due to fires, explosions, or gas or water inundations. The decision to require

training reflects the Agency's evaluation of the existing training programs at underground coal mines and the results of an investigation of a mining accident where victims were unfamiliar with evacuation procedures and did not know not to re-enter the affected areas of the mine during a mine emergency.

Based on Agency experience, MSHA estimates that there are approximately 45,000 workers affected by this ETS. Because effective training related to evacuation procedures for the specified mine emergencies is essential to the safety and health of miners, MSHA has determined that there is a need for training of miners to acquaint all miners with the emergency response and evacuation procedures for all mine emergencies. In addition, in the event that any revisions are made to the mine emergency evacuation and firefighting program of instruction as a result of its submission to MSHA for approval, miners would need to be trained in those revisions.

Moreover, as part of this ETS, MSHA's existing training regulation in 30 CFR part 48 is being revised to specifically include annual refresher training of miners regarding mine emergency evacuation and firefighting plans. The training of new miners and experienced miner training under part 48 does not need to be revised, however, because existing section 48.5(b)(5) provides for training regarding emergency evacuation and firefighting plans for new miners and existing section 48.6(b)(5) provides for training regarding emergency evacuation and firefighting plans for experienced miners. Further discussion of the annual refresher training of miners regarding the mine emergency evacuation and firefighting plan is located elsewhere in this preamble.

Furthermore, unlike existing section 75.1101-23(a)(2), new section 75.1502(a) does not include an explicit provision that the approved program of instruction be given to all miners annually or newly employed miners within six months after the date of employment. Rather, as discussed above, section 75.1502(a) provides for the training of miners to acquaint all miners with the mine emergency evacuation procedures for the specified mine emergencies as soon as possible but not more than 30 days after the date of publication of this ETS.

In addition, new miner and experienced miner training is covered under existing sections 48.5 and 48.6, and annual refresher training of miners regarding mine emergency evacuation and firefighting plans are now covered under the revised part 48 training

regulations. Accordingly, inclusion of those training provisions within new section 75.1502 would be duplicative. Therefore, under this ETS, the level of safety afforded miners will be maintained or increased from the level of safety afforded under existing section 75.1101-23 because this ETS provides for the training of all miners for mine emergencies including explosions and gas or water inundations, not just mine fires, and continues to provide annual refresher training of miners while eliminating duplicate provisions and consolidating the training requirements under part 48. This modification of the training requirements under existing section 75.1101-23 does not represent a reduction in safety to miners because the training requirements of existing section 75.1101-23 are incorporated in new section 75.1502 and the revised and existing sections of part 48.

Paragraph (a) of new section 75.1502, like existing section 75.1101-23(a), requires that the program of instruction be submitted for approval to MSHA. The Agency has determined that in view of the emergency nature of this standard, operators must submit a mine emergency evacuation and firefighting program of instruction to MSHA within 30 days of the publication of this ETS. Paragraph (a) of new section 75.1502 further provides that all miners will be trained on any revisions made to the program of instruction after it has been approved by MSHA to ensure that miners are kept aware of any changes made to the mine emergency evacuation and firefighting plan after they have received initial training.

Because MSHA has determined that miners are exposed to grave danger under the specified mine emergencies which require evacuation, paragraphs (a)(1) through (a)(4) of new section 75.1502 broaden the scope of the approved program of instruction under existing section 75.1101-23(a)(1) through (3). Under new section 75.1502(a)(1), the approved program of instruction must include a specific plan to acquaint miners on all shifts with procedures for mine emergency evacuation for mine emergencies which endanger miners due to fire, explosion, or gas or water inundation. New paragraph (a)(2) also expands the existing requirements to include procedures for the evacuation of all miners not required for a mine emergency response. In addition, under new paragraph (a)(3), the procedures for the rapid assembly and transportation of necessary miners, fire suppression equipment, and rescue apparatus to the scene of the mine fire is broadened to include the scene of the mine emergency. Finally, new paragraph

(a)(4) retains the same requirements for procedures for the operation of fire suppression equipment.

Existing MSHA-approved plans already discuss in detail the use, location of firefighting equipment, and location of escapeways and exit routes, and other procedures. These topics should be expanded to cover mine explosion and gas and water inundation emergencies in addition to fire emergencies. MSHA believes that an effective plan consists of at least the following elements: Procedures to rapidly notify each underground miner in the event of an emergency; and assignments of personnel in preparation for an evacuation including procedures to assemble and account for all miners during an evacuation, procedures to direct underground water supplies, and procedures to deenergize electrical power as may be appropriate during an evacuation. Mine operators should also include within the plans the location and availability of communication systems underground, assignments of underground and surface personnel to coordinate the evacuation, and the design and layout of the mine ventilation system as it might affect miners in an evacuation.

In addition, any mine using an atmospheric monitoring system should integrate the alert and alarm response procedure into the firefighting and evacuation plan. The plan should be designed to assure that all miners are familiar with the escape routes and escape facilities from their work area, and are familiar with the operation and proper donning procedures of self-contained self-rescuers under emergency scenarios. The plan should also address the requirements of new section 75.1501, and make it clear to miners that they are required to evacuate unless they are essential for emergency response activities and they are properly equipped and trained.

MSHA is soliciting comments on the specific elements of the mine emergency evacuation and firefighting plan to be included in the final rule.

Finally, as required by the last sentence in section 75.1501(b), only properly trained and equipped persons essential to respond to the mine emergency may remain underground. Therefore, plans should address proper training and equipment to be used under various emergency scenarios. For example, the plan might state that miners must be equipped with gas detectors and qualified to use them when entering an area affected by a gas inundation.

Paragraph (b) of new section 75.1502, concerning firefighting, retains the same

requirements as existing section 75.1101-23(b).

Paragraph (c) of new section 75.1502 essentially retains the same requirements as existing section 75.1101-23(c) with the exception that mine emergency evacuation drills are now required to ensure that miners are familiar with and are able to accomplish a mine evacuation in the event of a mine fire, explosion, or gas or water inundation emergency.

#### Revisions to Part 48—Annual Refresher Training of Miners

MSHA has determined to unify the training approach for mine emergency evacuation and for firefighting plans. The rule includes the initial immediate training requirement in section 75.1501 of this ETS. The rule also revises part 48 for annual refresher training of miners regarding mine emergency evacuation and firefighting plans specifically for underground coal mines.

Subpart A of 30 CFR part 48 prescribes requirements for submitting and obtaining MSHA approval of operator-administered programs for training and retraining underground miners. Each mine must have an approved training program for training new miners and newly-employed experienced miners, as well as training miners for new tasks, and providing annual refresher training.

The existing training requirements for new miners under § 48.5, and newly-employed experienced miners under § 48.6, do not need to be revised because emergency evacuation and firefighting training are provided under those existing sections. Annual refresher training under existing § 48.8, however, does not cover emergency evacuation or firefighting training. Therefore, § 48.8 is revised by this ETS to include a requirement that the annual refresher training include the mine emergency evacuation and firefighting plan. This training will acquaint all underground coal miners with the mine emergency evacuation procedures for mine emergencies involving fire, explosion, or gas or water inundations. MSHA specifically solicits comments on whether any conforming amendments should be made in the final rule to sections 48.5 and 48.6. Those conforming amendments would state that mine emergency evacuation and firefighting plans would be topics included. MSHA further solicits comments on whether the training provision should be included in part 48 or in new section 75.1502.

### C. Feasibility

We have concluded that the requirements of the final rule are both technologically and economically feasible.

#### 1. Technological Feasibility

MSHA believes that the ETS would be technologically feasible for the mining industry. An agency must show that modern technology has at least conceived some industrial strategies or devices that are likely to be capable of meeting the standard, and which industry is generally capable of adopting. *American Iron and Steel Institute v. OSHA*, (AISI-II) 939 F.2d 975, 980 (D.C. Cir. 1991); *American Iron and Steel Institute v. OSHA*, (AISI-I) 577 F.2d 825 (3d Cir. 1978) at 832-835; and *Industrial Union Dept., AFL-CIO v. Hodgson*, 499 F.2d 467,478 (D.C. Cir. 1974).

This ETS addresses revisions of mine emergency evacuation plans and associated training. This ETS neither requires underground coal mines to procure any additional equipment nor use any new technology. This is not a technology-forcing standard and does not involve activities on the frontiers of science. We conclude, therefore, that this ETS is technologically feasible.

#### 2. Economic Feasibility

Underground coal mines would incur costs of approximately \$0.26 million yearly to comply with this ETS. That these compliance costs represent well under 1 percent (about 0.004 percent) of annual revenues is sufficient evidence, MSHA believe, to conclude that this ETS is economically feasible for underground coal mines.

### III. Executive Order 12291 and the Regulatory Flexibility Act

Based on its analysis, MSHA has preliminarily determined that this ETS would not have a significant economic impact on a substantial number of small entities. MSHA has so certified this finding to the SBA. The factual basis for this certification is discussed in chapter V of the Preliminary Regulatory Economic Analysis (PREA).

### IV. Paperwork Reduction Act

The ETS contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA95). The ETS has first year burden hours (those that occur only in the first year) and, annual burden hours which occur in the first year and every year thereafter.

#### In the First Year of the ETS

In the first year the ETS is in effect, there would be an increase of 5,010 burden hours and a related cost increase of \$250,041. Table VII-1 in the PREA supporting this ETS shows that, with respect to first year-only burden hours and costs, there would be an increase of 4,304 burden hours and related costs of \$211,565. Table VII-2 in the PREA shows that, with respect to every year that the ETS is in effect (including the first year), there would be an increase of 706 burden hours and related costs of \$38,476.

#### In the Second Year of the ETS

After the first year of the ETS, those burden hours and related costs occurring only in the first year would no longer occur, and what remains are only the annual burden hours and related costs. Therefore, in the second year of the ETS, and for every year thereafter, there would be an increase of 706 burden hours and related costs of \$38,476.

Under section 101(b)(3) of the Mine Act, an ETS as published serves as a proposed rule. As a proposed rule, we invite public comments and are particularly interested in comments which:

1. Evaluate whether the collection of information (presented here and in the PREA for the ETS) is necessary for the proper performance of the functions of MSHA, including whether the information would have practical utility;
2. Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

We have submitted a copy of this ETS to OMB for its review and approval of these information collections. Interested persons are requested to send comments regarding this information collection, including suggestions for reducing this burden, if under 10 pages, by facsimile (202) 395-6974 to Attn: Desk Officer for MSHA. All comments may be sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th

Street, NW., Washington, DC 20503, Attn: Desk Officer for MSHA. Please send a copy of your comments to MSHA at the addresses listed in the ADDRESSES section of the preamble. Submit written comments on the information collection not later than February 10, 2003.

Our paperwork submission summarized above is explained in detail in the PREA that accompanies the ETS. The PREA includes the estimated costs and assumptions for each paperwork requirement related to the ETS. A copy of the PREA is available on our website at <http://www.msha.gov/REGSINFO.HTM> and can also be obtained in hardcopy from us. These paperwork requirements have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1995. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. Comments may be sent to the addresses listed in the ADDRESSES section of the preamble.

### V. Executive Order 12866

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of intended standards and regulations. We have fulfilled this requirement for this ETS and determined that it would not have an annual effect of \$100 million or more on the economy. Therefore, we do not consider this ETS to be economically significant under section 3(f)(1) of Executive Order 12866.

In the PREA, MSHA has developed estimates of the safety benefits of this ETS, which ensures that operators and miners have a clear understanding of actions and procedures to be followed in the event of a mine emergency. MSHA has concluded that the two fatalities at the Willow Creek Mine and nine of the 13 fatalities at the Jim Walter No. 5 Mine might have been prevented had this ETS been in place. The Agency has reviewed its coal accident investigation database and has not identified any other fatalities during the past 10 years that might have been prevented by this ETS. In summary, based on its experience over the past ten years, MSHA believes it is reasonable to estimate that this ETS could prevent 11 miners' lives from being lost every ten years, or an average benefit of the ETS of 1.1 miners' lives saved every year. The actual number of mine fatalities prevented could be much larger.

## VI. The Unfunded Mandates Reform Act of 1995 and Other Regulatory Considerations

### A. Unfunded Mandates Reform Act

MSHA has determined that, for purposes of section 202 of the Unfunded Mandates Reform Act of 1995, this ETS does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments in the aggregate of more than \$100 million, or increased expenditures by the private sector of more than \$100 million. Moreover, the Agency has determined that for purposes of section 203 of that Act, this ETS would not significantly or uniquely affect small governments.

#### Background

The Unfunded Mandates Reform Act was enacted in 1995. While much of the Act is designed to assist the Congress in determining whether its actions will impose costly new mandates on State, local, and tribal governments, the Act also includes requirements to assist Federal Agencies to make this same determination with respect to regulatory actions.

#### Analysis

Based on the analysis in this PREA, compliance with this ETS by coal mine operators and contractors covered by this rulemaking would result in a compliance cost of approximately \$0.26 million per year. Accordingly, there is no need for further analysis under section 202 of the Unfunded Mandates Reform Act.

We have concluded that small governmental entities would not be significantly or uniquely impacted by the ETS. The ETS would cover 664 underground coal mining operations.

### B. Executive Order 13132: Federalism

We have reviewed this ETS in accordance with Executive Order 13132 regarding federalism and have determined that it does not have "federalism implications." This ETS does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

### C. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

In accordance with Executive Order 13045, we have evaluated the environmental health and safety effects of the ETS on children. The Agency has

determined that the ETS would have no adverse effect on children.

### D. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

We certify that the ETS would not impose substantial direct compliance cost on Indian tribal governments. Under section 101(b)(3) of the Mine Act, an ETS as published serves as a proposed rule. As a proposed rule, we will provide the public, including Indian tribal governments that operate mines, the opportunity to comment on the requirements of the ETS.

### E. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This ETS is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

### F. Executive Order 12988: Civil Justice Reform

We have reviewed Executive Order 12988 and determined that this ETS would not unduly burden the Federal court system. We drafted the ETS to provide a clear legal standard for affected conduct. Since the ETS serves as a proposed rule, we have asked for public comment to eliminate ambiguities or drafting errors.

### G. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, we have reviewed the ETS for its energy impacts. The ETS would have no effect on the distribution or use of energy. The only impacts of the ETS on the supply of energy would be through its effect on the price of coal.

The estimated yearly cost of the ETS for the coal mining industry would be about \$0.26 million.<sup>1</sup> The annual revenues of the coal mining industry in 2000 were approximately 17.7 billion.<sup>2</sup> The cost of the ETS for the coal mining industry would therefore be 0.001% of revenues. Even if we were to suppose that the increased cost caused by the

<sup>1</sup> Estimate obtained from Table IV-1 of the PREA.

<sup>2</sup> Data for revenues derived from: U.S. Department of Labor, Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, based on 2000 PEIR data and U.S. Department of Energy, Energy Information Administration, *Coal Industry Annual 2000*, January 2002, p. 206.

ETS would be fully reflected in coal prices, the impact would be negligible.

Accordingly, we have determined that the ETS would have no significant adverse effect on the supply, distribution, or use of energy.

### H. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the ETS to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in chapter V of the PREA, MSHA has determined that the ETS would not have a significant economic impact on a substantial number of small entities.

## VII. Conduct of Public Hearings

As stated above, in accordance with section 101(b)(3) of the Mine Act, this ETS will also serve as the Agency's proposed rule. MSHA will hold hearings on the proposed rule at the locations and dates listed in the **ADDRESSES** section of the preamble. The hearings will be conducted in an informal manner. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions. The hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. The hearing panel may ask questions of speakers. At the discretion of the presiding official, the time allocated to speakers for their presentation may be limited. The hearings will begin at 9 a.m. and end after the last scheduled speaker appears; and in any event, not later than 5 p.m. A verbatim transcript of the proceedings will be prepared and made a part of the rulemaking record. Copies of the transcript will be available to the public.

The transcript will also be available on MSHA's Web page at <http://www.msha.gov>, under Statutory and Regulatory Information.

MSHA will accept post-hearing written comments and other appropriate data for the record from any interested party, including those not presenting oral statements. Written comments will be included in the rulemaking record.

## VIII. Close of Post-hearing Comment Period

The post-hearing comment period will close on February 28, 2003.

**List of Subjects**

*30 CFR Part 48*

Education, Mine safety and health, Reporting and recordkeeping requirements.

*30 CFR Part 75*

Coal mines, Underground coal mining, Mine safety and health, Emergency medical services, Fire prevention, reporting and recordkeeping requirements.

Dated: December 9, 2002.

**Dave D. Lauriski,**

*Assistant Secretary of Labor for Mine Safety and Health.*

Chapter I of title 30, parts 48 and 75, of the Code of Federal Regulations is amended as follows:

**PART 48—[AMENDED]**

1. The authority citation for part 48 continues to read as follows:

**Authority:** 30 U.S.C. 811, 825.

2. Section 48.8 is amended by revising paragraph (b)(4) to read as follows:

**§ 48.8 Annual refresher training of miners; minimum courses of instruction; hours of instruction.**

\* \* \* \* \*

(b) \* \* \*

(4) *Roof or ground control, ventilation, emergency evacuation and firefighting plans.* The course shall include a review of roof or ground control plans in effect at the mine and the procedures for maintaining and controlling ventilation. In addition, for underground coal mines the course shall include a review of the emergency evacuation and firefighting plans in effect at the mine.

\* \* \* \* \*

**PART 75—[AMENDED]**

3. The authority citation for part 75 continues to read as follows:

**Authority:** 30 U.S.C. 811.

4. Subpart P is amended by revising the heading and by adding § 75.1501 to read as follows:

**Subpart P—Mine Emergencies**

\* \* \* \* \*

**§ 75.1501 Emergency evacuations.**

(a) For each shift that miners work underground, there shall be in attendance a responsible person designated by the mine operator to take charge during mine emergencies

involving a fire, explosion or gas or water inundations. The responsible person shall have current knowledge of the assigned location and expected movements of miners underground, the operation of the mine ventilation system, the location of the mine escapeways, the mine communications system, any mine monitoring system if used, and the mine emergency evacuation and firefighting program of instruction.

(b) The responsible person shall initiate and conduct an immediate mine evacuation when there is a mine emergency which presents an imminent danger to miners due to fire or explosion or gas or water inundation. Only properly trained and equipped persons essential to respond to the mine emergency may remain underground.

(c) By December 19, 2002, the mine operator shall instruct all miners about the requirements of this section and the identity of the responsible person(s) designated by the operator for their workshift. The mine operator shall instruct miners of any change in the identity of the responsible person(s) before the start of their workshift.

(d) Nothing in this section shall be construed to restrict the ability of other persons in the mine to warn of an imminent danger which warrants evacuation.

**§ 75.1101–23 [Redesignated as § 75.1502]**

5. Section 75.1101–23 is redesignated as 75.1502 and revised to read as follows:

**§ 75.1502 Mine emergency evacuation and firefighting program of instruction.**

(a) Each operator of an underground coal mine shall adopt a program for the instruction of all miners in the proper evacuation procedures to be followed in the event of a mine emergency, the location and use of firefighting equipment, location of escapeways, exits, and routes of travel to the surface, and shall begin training in those procedures as soon as possible but no later than January 13, 2003. In addition, such program shall be submitted for approval to the District Manager of the Coal Mine Health and Safety District in which the mine is located no later than January 13, 2003. Before implementing any revision to the mine emergency evacuation and firefighting program of instruction persons affected by the revision shall be instructed by the operator in its provisions. The approved program of instruction shall include a specific plan designed to acquaint miners on all shifts with procedures for:

(1) Mine emergency evacuation for mine emergencies that endanger miners due to fire, explosion, or gas or water inundation;

(2) Evacuation of all miners not required for a mine emergency response;

(3) Rapid assembly and transportation of necessary miners, fire suppression equipment, and rescue apparatus to the scene of the mine emergency; and,

(4) Operation of the fire suppression equipment available in the mine.

(b) In addition to the approved program of instruction required by paragraph (a) of this section, each operator of an underground coal mine shall ensure that:

(1) At least two miners in each working section on each production shift are proficient in the use of all fire suppression equipment available on such working section, and know the location of such fire suppression equipment;

(2) Each operator of attended equipment specified in § 75.1107–1(c)(1), and each miner assigned to perform job duties at the job site in the direct line of sight of attended equipment as described in § 75.1107–1(c)(2), is proficient in the use of fire suppression devices installed on such attended equipment; and,

(3) The shift foreman and at least one miner for every five miners working underground on a maintenance shift are proficient in the use of fire suppression equipment available in the mine, and know the location of such fire suppression equipment.

(c) Each operator of an underground coal mine shall require all miners to participate in mine emergency evacuation drills, which shall be held at periods of time so as to ensure that all miners participate in such evacuations at intervals of not more than 90 days.

(1) The operator shall certify by signature and date that the mine emergency evacuation drills were held in accordance with the requirements of this section. Certifications shall be kept at the mine and made available on request to an authorized representative of the Secretary.

(2) For purposes of this paragraph (c), a mine emergency evacuation drill shall consist of a simulation of the actions required by the approved mine emergency evacuation and firefighting plan described in paragraph (a)(1) of this section.

[FR Doc. 02–31358 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–43–P