

Commission shall grant a revoked parolee credit toward completion of the sentence for all time served on parole.

(2)(A) The Commission shall forfeit credit for the period of parole if a parolee is convicted of a crime committed during a period of parole and that is punishable by a term of imprisonment of more than one year.

(B) If the crime is punishable by any other term of imprisonment, the Commission shall forfeit credit for the period of parole unless the Commission determines that such forfeiture is not necessary to protect the public welfare. In making this decision, the Commission shall consider the nature and circumstances of the violation behavior, the history and characteristics of the offender, including the offender's supervision history, and other available and relevant information.

(3) If, during the period of parole, a parolee intentionally refuses or fails to respond to any reasonable request, order, summons, or warrant of the Commission or any member or agent of the Commission, the Commission may order that the parolee not receive credit for the period of time that the Commission determines that the parolee failed or refused to respond to such a request, order, summons, or warrant.

(4) The provisions of this paragraph shall apply only to any period of parole that is being served on or after May 20, 2009, and shall not apply to any period of parole that was revoked before that date.

(e) Notwithstanding paragraphs (a) through (d) of this section, prisoners committed under the Federal Youth Corrections Act shall not be subject to forfeiture of time on parole, but shall serve uninterrupted sentences from the date of conviction except as provided in § 2.10(b) and (c). DC Code 24–406(c) and paragraphs (a) through (d) of this section are fully applicable to prisoners serving sentences under the DC Youth Rehabilitation Act.

\* \* \* \* \*

■ 13. Section § 2.208 is revised to read as follows:

**§ 2.208 Termination of a term of supervised release.**

(a)(1) The Commission may terminate a term of supervised release and discharge the releasee from supervision after the expiration of one year of supervised release, if the Commission is satisfied that such action is warranted by the conduct of the releasee and the interest of justice.

(2) Upon terminating supervision of a committed youth offender before the sentence expires, the Commission shall set aside the committed youth offender's

conviction and issue a certificate setting aside the conviction instead of a certificate of discharge.

(b) Two years after a prisoner is released on supervision, and at least annually thereafter, the Commission shall review the status of the releasee to determine the need for continued supervision. The Commission shall also conduct a status review whenever the supervision officer recommends termination of the supervised release term. If the term of supervised release imposed by the court is two years or less, the Commission shall consider termination of supervision only if recommended by the releasee's supervision officer.

(c) In calculating the two-year period provided in paragraph (b) of this section, the Commission shall not include any period of release before the most recent release, or any period served in confinement on any other sentence.

(d) (1) In deciding whether to terminate supervised release, the Commission shall consider the guidelines of this paragraph. The guidelines are advisory and the Commission may disregard the outcome indicated by the guidelines based on case specific factors. Termination of supervision is indicated if the releasee:

(A) Has a salient factor score in the very good risk category and has completed two continuous years of supervision free from an incident of new criminal behavior or serious release violation; or

(B) Has a salient factor score in a risk category other than very good and has completed three continuous years of supervision free from an incident of new criminal behavior or serious release violation.

(2) As used in this paragraph, the term "an incident of new criminal behavior or serious release violation" includes a new arrest or report of a release violation if supported by substantial evidence of guilt, even if no conviction or release revocation results. The Commission shall not terminate supervision of a releasee until it determines the disposition of a pending criminal charge.

(3) Case-specific factors that may justify a departure either above or below the early termination guidelines may relate to the current behavior of the releasee, or to the releasee's background and criminal history.

Dated: June 8, 2009.

**Isaac Fulwood,**

*Chairman, U.S. Parole Commission.*

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**BILLING CODE 4410–31–M**

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**30 CFR Part 49**

**RIN 1219–AB66**

**Mine Rescue Teams**

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises MSHA's existing standards for mine rescue teams for underground coal mines. On February 10, 2009, the United States Court of Appeals for the District of Columbia Circuit (Court) held that MSHA's Mine Rescue Teams rule, issued on February 8, 2008, is inconsistent with Section 4 of the Mine Improvement and New Emergency Response (MINER) Act in three respects. This final rule revises those portions of the existing rule in accordance with the MINER Act, consistent with the Court's decision.

**DATES:** *Effective Date:* June 17, 2009.

*Compliance Dates:* Each underground coal mine operator affected by the changes in this final rule shall comply with the requirements of § 49.50(a), Table 49.50–A, by December 14, 2009, and the requirements of § 49.50(a), Table 49.50–B, by June 17, 2010.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, at [silvey.patricia@dol.gov](mailto:silvey.patricia@dol.gov) (Internet e-mail), 202–693–9440 (voice), or 202–693–9441 (facsimile).

**SUPPLEMENTARY INFORMATION:**

**I. Final Rule**

The Administrative Procedure Act (APA) requires that rulemakings be published in the **Federal Register** and requires generally that agencies provide an opportunity for public comment. However, notice and an opportunity for public comment are not required when the agency "for good cause finds" that notice and comment "are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B).

The Court stated in its decision that the MINER Act does not allow MSHA to exercise any discretion with respect to the issues in the Court's order. As a result, MSHA finds that there is "good cause" under 5 U.S.C. 553(b)(B) of the APA to issue this final rule without prior public notice and comment. Further, in accordance with the Court's decision, MSHA has determined that there is "good cause" to except this action from the 30-day delayed effective

date requirement under 5 U.S.C. 553(d)(3) of the APA. The final rule is effective on June 17, 2009.

## II. Rulemaking Background

On February 8, 2008 (73 FR 7636), MSHA published a final rule that revised the Agency's existing requirements for mine rescue teams for underground coal mines. The final rule implemented Section 4 of the MINER Act and established new requirements to improve overall mine rescue capability, to improve mine emergency response time and mine rescue team effectiveness, and to increase the quantity and quality of mine rescue team training.

On April 4, 2008, the United Mine Workers of America (UMWA) challenged the final rule in the U.S. Court of Appeals for the District of Columbia Circuit (Court). On February 10, 2009, the Court issued its decision and held that MSHA's final rule is inconsistent with the MINER Act in three respects. *Int'l Union, United Mine Workers of Am. v. Dep't of Labor*, 554 F.3d 150 (D.C. Cir. 2009). The Court vacated the final rule insofar as it allows—

(1) Mine-site and state-sponsored teams to train at small mines annually rather than semi-annually;

(2) State employees who are members of State-sponsored teams to substitute certain job duties for participation in one of the two annually required mine rescue contests; and

(3) State employees who are members of State-sponsored teams to participate in mine rescue contests by serving as judges. (**Note:** The Agency's intent with respect to this item is included in the preamble to the 2008 final rule, and is not included in the regulatory text.)

The Court held that the two provisions of the rule, and MSHA's conclusion in the preamble with respect to team members serving as judges, contradict the plain language of the MINER Act.

## III. Analysis

This final rule revises the existing rule in accordance with the MINER Act, consistent with the Court's decision. MSHA has determined that 165 mine operators (156 small and 9 large mines) in the State of Kentucky will be impacted by the changes in this final rule.

The final rule revises § 49.11(b) by modifying the table at the end of this section to require that mine-site teams and State-sponsored teams must participate in mine rescue training at each mine covered by the mine rescue team at least annually at large mines

and at least semi-annually at small mines. The final rule also modifies the note at the end of the table by deleting the language allowing members of State-sponsored teams to substitute their regular job experience for 50 percent of the statutorily required mine rescue contests and mine-site training.

For mine-site and State-sponsored mine rescue teams, the final rule revises § 49.20(b)(1) and (b)(4) to require mine-site training semi-annually, as opposed to at least annually under the existing rule, at small mines.

In addition, under this final rule, team members of State-sponsored teams who are full-time state employees whose primary duties include (1) inspecting underground mines for compliance with State safety laws or (2) training mine rescue teams or (3) other similar duties that would enhance their mine rescue knowledge must participate in two mine rescue contests annually and train at the covered small mine at least semi-annually.

In the preamble to the February 8, 2008 final rule (73 FR 7643), MSHA stated its intent to consider State-sponsored teams, whose members are full-time State employees, as participating in a local mine rescue contest when performing duties as contest judges or officials. The Court found MSHA's conclusion that one can participate in a mine rescue contest by judging to be at odds with the statutory language. In this final rule, MSHA rescinds the Agency's intent, as stated in the preamble to the 2008 final rule. Under this final rule, all members of State-sponsored teams who are full-time State employees must participate in two local mine rescue contests, regardless of whether they also perform duties as a contest judge or official.

## IV. Implementation Schedule

MSHA anticipates that underground coal mine operators in Kentucky may experience practical difficulties in meeting the requirements in the final rule, if those requirements were effective upon publication. Based on Agency experience and data and information from Kentucky representatives, MSHA projects that it will take approximately 6 months for mines in Kentucky affected by this final rule to establish new teams, establish mine rescue stations, and conduct initial training. MSHA also projects that it will take one year for these mine rescue teams to complete all required training, including mine rescue contests. The final rule, therefore, includes a 6-month period for operators to establish new teams, establish mine rescue stations, and conduct initial

training; and a one-year period for teams to complete all required training, including mine rescue contests.

## V. Regulatory Economic Analysis

Executive Order (E.O.) 12866 requires that regulatory agencies assess both the costs and benefits of regulations. To comply with E.O. 12866, MSHA prepared a Regulatory Economic Analysis (REA) for the 2008 final rule. The REA is located on MSHA's Web site at <http://www.msha.gov/regsinfo.htm>. A copy of the REA can be obtained from MSHA's Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939.

Based on the analysis presented below, MSHA has determined that a complete revision of the REA is not necessary for this rulemaking. The profile of the underground coal industry, and the anticipated costs and benefits of the final rule generally remain unchanged. Although MSHA's feasibility determination is generally the same, the Agency has determined that this final rule may present some economic and practical considerations for underground coal mine operators in Kentucky. These considerations, discussed more fully below, will prevent underground coal mine operators in the state of Kentucky from relying on State-sponsored mine rescue teams and require them to establish additional composite and contract mine rescue teams.

MSHA has determined that 165 mine operators (156 small mines and 9 large mines) in the State of Kentucky will be impacted by the changes in this final rule. Kentucky is the only State that employs full-time State employees on their State-sponsored mine rescue teams. Kentucky currently has 12 State-sponsored mine rescue teams and operates six mine rescue stations. Each team member currently trains once per year in each covered mine and participates in one mine rescue contest each year. In order to meet the requirements of the MINER Act and this final rule, each rescue team member would have to participate in an additional mine rescue contest each year and train in each covered small mine an additional time each year.

Representatives from Kentucky and the State's mining association have indicated that they do not have the resources to have their State teams train in the 156 small underground coal mines an additional time each year. According to the representatives, the Kentucky mine rescue teams cannot train at each covered small mine twice

each year and perform the required mine inspections and other duties.

If the Kentucky State-sponsored mine rescue teams do not provide mine rescue coverage in accordance with the final rule, the Kentucky mine operators will have to find other means of coverage. The 156 small mines in Kentucky currently use the State-sponsored mine rescue teams for mine rescue coverage. Nine of the 74 large Kentucky mines currently have one mine rescue team and use the Kentucky State-sponsored mine rescue teams as the second team. Like the existing rule, this final rule requires that each mine have two certified mine rescue teams. MSHA estimates that these 165 mine operators will establish a combination of 28 composite and contract teams to meet the requirements of this final rule. In addition, MSHA estimates that the mine operators will establish four mine rescue stations.

Based on data presented in the 2008 REA, MSHA estimated an initial cost of \$141,500 to establish each mine rescue station (see Table IV-3; all table numbers refer to the 2008 REA) and additional yearly costs of \$17,000 per station for land use and equipment maintenance, supplies, inspection, testing, and corrective action (see Tables IV-3 and IV-4). In addition, MSHA estimates that it will cost \$24,500 per team for annual training and contests (see Tables IV-6 through 11 and the related discussions). The estimated first-year cost of creating and equipping four mine rescue stations and 28 mine rescue teams is \$1,320,000 [4 × (\$141,500 + \$17,000) + (28 × \$24,500)]. Based on a 7 percent discount rate and the useful life estimates presented in the 2008 REA, the estimated yearly cost for these mines is \$794,000.

In 2007, 68.8 million tons of coal were mined by the underground mines in

Kentucky. At an average price of \$43.80 for a ton of underground coal, this represented \$3.0 billion in revenue. MSHA estimates that the annual revenue of the 156 small mines and 9 large mines impacted by the final rule is \$728.2 million. The \$794,000 yearly cost represents about 0.11 percent of the revenue of these Kentucky mines. MSHA concludes that the final rule is economically feasible for these mines.

MSHA anticipates that underground coal mine operators in Kentucky may experience practical difficulties in meeting the requirements in the final rule, if those requirements were effective upon publication. Based on Agency experience and data and information from Kentucky representatives, MSHA projects that it will take approximately 6 months for the mines in Kentucky affected by this final rule to establish new teams, establish mine rescue stations, and conduct initial training. MSHA also projects that it will take one year for these mine rescue teams to complete all required training, including mine rescue contests. The final rule, therefore, includes a 6-month period for operators to establish new teams, establish mine rescue stations, and conduct initial training; and a one-year period for teams to complete all required training, including mine rescue contests.

**VI. Paperwork Reduction Act of 1995**

This final rule revises MSHA's existing standards for mine rescue teams for underground coal mines. These changes in the Mine Rescue Teams regulation affect the paperwork collection burden hours and associated cost. MSHA estimates that this final rule will necessitate the formation of four additional mine rescue stations, requiring 48 additional breathing apparatus, and 28 additional mine

rescue teams, requiring training for 168 additional mine rescue team members, resulting in an increase of 216 responses and 163 burden hours.

Under § 49.16, certification of inspection and testing of 48 additional breathing apparatus, as well as a record of any corrective action taken, would result in an increase of 129.6 paperwork burden hours and \$4,103 annual burden cost. Under § 49.18, a record of training for 168 new mine rescue team members would result in an increase of 33.6 paperwork burden hours and \$2,398 annual burden cost.

The Office of Management and Budget (OMB) has approved these requirements under OMB control number 1219-0144.

**List of Subjects in 30 CFR Part 49**

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

**Michael A. Davis,**

*Deputy Assistant Secretary for Operations, Mine Safety and Health.*

■ For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977 as amended by the Mine Improvement and New Emergency Response Act of 2006, MSHA amends chapter I of title 30 of the Code of Federal Regulations as follows:

**PART 49—MINE RESCUE TEAMS**

■ 1. The authority citation for part 49 continues to read as follows:

**Authority:** 30 U.S.C. 811, 825(e).

■ 2. In § 49.11(b), revise Table 49.11 to read as follows:

**§ 49.11 Purpose and scope.**

\* \* \* \* \*  
(b) \* \* \*

**TABLE 49.11—SUMMARY OF NEW MINER ACT REQUIREMENTS FOR UNDERGROUND COAL MINE OPERATORS AND MINE RESCUE TEAMS**

Requirement	Type of mine rescue team			
	Mine-site	Composite	Contract	State-sponsored
Team members must participate at least annually in two local mine rescue contests.	YES .....	YES .....	YES .....	YES.
Team members must participate in mine rescue training at each mine covered by the mine rescue team. A portion of the training must be conducted underground.	Annually at Large Mines; Semi-annually at Small Mines.	Semi-annually .....	Quarterly at Large Mines; Semi-annually at Small Mines.	Annually at Large Mines; Semi-annually at Small Mines.
Team must be available at the mine within 1 hour ground travel time from the mine rescue station.	YES .....	YES .....	YES .....	YES.

TABLE 49.11—SUMMARY OF NEW MINER ACT REQUIREMENTS FOR UNDERGROUND COAL MINE OPERATORS AND MINE RESCUE TEAMS—Continued

Requirement	Type of mine rescue team			
	Mine-site	Composite	Contract	State-sponsored
Team members must be knowledgeable about the operations and ventilation of each covered mine.	YES .....	YES .....	YES .....	YES.
Team must include at least two active employees from each covered large mine and at least one active employee from each covered small mine.	.....	YES .....	.....	
Team must be comprised of persons with a minimum of 3 years underground coal mine experience that shall have occurred within the 10-year period preceding their employment on the contract mine rescue team.	.....	.....	YES .....	

All mine operators must provide for two certified mine rescue teams. Large mine operators shall provide one team that is either an individual mine-site mine rescue team or a composite team.

Team members of State-sponsored teams who are full-time State employees whose primary job duties include (1) inspecting underground mines for compliance with State safety laws or (2) training mine rescue teams or (3) other similar duties that would enhance their mine rescue knowledge may substitute their regular job experience for 50 percent of the training requirements for non-State employee mine rescue team members, except these team members must participate in two local mine rescue contests and train at the covered mine in accordance with § 49.20(b).

■ 3. In § 49.20, revise paragraphs (b)(1) and (b)(4) to read as follows:

§ 49.20 Requirements for all coal mines.

(b) \* \* \*  
 (1) *Mine-site team.* Members who work at the mine and participate in mine rescue training at the mine at least annually at large mines and at least semi-annually at small mines.

(4) *State-sponsored team.* Members who are state employees and participate in mine rescue training at each covered mine at least annually at large mines and at least semi-annually at small mines.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2008-1119]

RIN 1625-AA11

Regulated Navigation Area; Chesapeake and Delaware Canal, Chesapeake City Anchorage Basin, MD

AGENCY: Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a permanent regulated navigation area (RNA) in certain waters of the Chesapeake and Delaware (C & D) Canal, within the anchorage basin at Chesapeake City, Maryland, to be enforced annually, on the last Saturday in June, from 12:01 a.m. until 11:59 p.m. This RNA is necessary to provide for the safety of life, property and the environment. This RNA will restrict and control the movement of vessels throughout the anchorage basin during the Town of Chesapeake City's Canal Day event.

**DATES:** This rule is effective on June 17, 2009.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2008-1119 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2008-1119 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590,

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Mr. Ronald L. Houck, Sector Baltimore Waterways Management Division, Coast Guard; telephone 410-576-2674, e-mail [Ronald.L.Houck@uscg.mil](mailto:Ronald.L.Houck@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On March 12, 2009, we published a notice of proposed rulemaking (NPRM) entitled "Regulated Navigation Area; Chesapeake and Delaware Canal, Chesapeake City Anchorage Basin, MD" in the **Federal Register** (74 FR 10695). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest since immediate action is needed to ensure the boating public's safety during the Canal Day festivities taking place in June 2009. Congestion created by the influx of boats and visitors for Canal Day festivities would substantially raise the risk of accidental