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30 CFR Parts 7 and 75

Refuge Alternatives for Underground Coal Mines; Proposed Rules

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

RIN 1219-AB84

Refuge Alternatives for Underground Coal Mines**AGENCY:** Mine Safety and Health Administration, Labor.**ACTION:** Limited reopening of the record.

SUMMARY: The Mine Safety and Health Administration (MSHA) is reopening the rulemaking record for MSHA's existing rule on Refuge Alternatives for the limited purpose of obtaining comments on the frequency for motor task (also known as "hands-on" training), decision-making, and expectations training for miners to deploy and use refuge alternatives in underground coal mines. The U.S. Court of Appeals for the District of Columbia Circuit remanded a training provision in the Refuge Alternatives rule, directing MSHA to explain the basis for requiring motor task (hands-on), decision-making, and expectations training annually rather than quarterly or to reopen the record and allow public comment. MSHA will review the comments to determine an appropriate course of action for the Agency in response to comments. MSHA will publish its response in the **Federal Register** addressing the public comments and either explaining the reason that it is leaving the existing rule unchanged or modifying the rule as the result of the public comment process.

DATES: Comments must be received by midnight Eastern Daylight Saving Time on October 7, 2013.

ADDRESSES: Comments and informational material may be sent to MSHA by any of the following methods. Clearly identify all submissions in the subject line of the message with "RIN 1219-AB84".

- *Federal E-Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Facsimile:* 202-693-9441.
- *Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939. For hand delivery, sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: George F. Triebisch, Director, Office of Standards, Regulations, and Variances, MSHA, at triebsch.george@dol.gov (email); 202-693-9440 (voice); or 202-

693-9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:*Concurrent Request for Information (RFI)*

Elsewhere in this issue of the **Federal Register**, MSHA is publishing a Request for Information (RFI) asking for data, comments, and industry experience relevant to miners' escape and refuge during an underground coal mine emergency. Responses to the RFI will assist the Agency in determining if changes to existing practices and regulations would improve the overall strategy for miners' escape and survivability.

Availability of Information

MSHA will post all comments and information on the Internet without change, including any personal information provided. Access comments and information electronically at <http://www.regulations.gov> or on MSHA's Web site at <http://www.msha.gov/currentcomments.asp>. Review comments in person at the MSHA Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

To subscribe to receive email notification when MSHA publishes rulemaking documents in the **Federal Register**, go to <http://www.msha.gov/subscriptions/subscribe.aspx>.

I. Statutory and Regulatory History

The Mine Improvement and New Emergency Response Act of 2006 (MINER Act) amended the Federal Mine Safety and Health Act of 1977 (Mine Act). Section 13 of the MINER Act directed the National Institute for Occupational Safety and Health (NIOSH) to conduct research and tests concerning the use of refuge chambers in underground coal mines, and to report the results to Congress and the Secretary of Labor (Secretary). The MINER Act directed the Secretary to respond to the NIOSH Report by reporting to Congress the actions, if any, that the Secretary intended to take based on the NIOSH Report, including proposing regulatory changes and the reasons for such actions.

NIOSH finalized its *Research Report on Refuge Alternatives for Underground Coal Mines* (NIOSH Report) in December 2007. The report drew from NIOSH experience, independent research and testing, and a survey of existing research related to mine refuge chambers.

In December 2007, Congress directed the Secretary to propose regulations, consistent with the recommendations of the NIOSH Report, requiring rescue chambers, or facilities that afford at least the same measure of protection, in underground coal mines not later than June 15, 2008, and to finalize the regulation not later than December 31, 2008 (Consolidated Appropriations Act of 2008, SEC. 112(b)).

MSHA published a notice of proposed rulemaking on June 16, 2008 (73 FR 34140) and the final rule on December 31, 2008 (73 FR 80656). The final rule established requirements for refuge alternatives in underground coal mines.

On January 13, 2009, the United Mine Workers of America (UMWA) petitioned the U.S. Court of Appeals for the District of Columbia Circuit (Court) to review MSHA's refuge alternatives final rule. The Court issued its decision on October 26, 2010, holding that the Secretary had not adequately explained the basis for requiring motor task (hands-on), decision-making, and expectations training only annually, rather than quarterly. The Court, therefore, remanded the training provision and ordered MSHA to either "provide an explanation . . . or . . . reopen the record, and afford interested parties an opportunity to comment." [*United Mine Workers v. MSHA*, 626 F.3d 84, 86, and 90-94 (D.C. Cir. 2010)]

II. Response to Court Order; Reopening the Record

In response to the Court's decision, this notice reopens the record and solicits public comment concerning the appropriate frequency for motor task (hands-on), decision-making, and expectations training on refuge alternatives. MSHA will review the comments to determine what actions, if any, the Agency will take in response to comments. MSHA will publish its response in the **Federal Register** addressing the public comments and either explaining the reason that the Agency is leaving the existing rule unchanged or modifying it as the result of the public comment process.

Motor task (hands-on) training consists of performing necessary activities associated with deploying and using a refuge alternative and its components. Decision-making training consists of learning when it is appropriate to use refuge alternatives. Expectations training consists of anticipating and experiencing the conditions that might be encountered during use of a refuge alternative (e.g., high heat and humidity, confined space).

NIOSH's Report recommended that each of these three types of training be required quarterly. The existing rule requires these three types of training annually and refers to them together as "annual expectations training." The existing rule also requires decision-making training during quarterly training and drills through reviewing and discussing scenarios for mine emergency evacuation, and a quarterly review of the written procedures for deploying and using the refuge alternatives and components that are provided at the mine. Annual motor task training, decision-making training, and expectations training, together with quarterly mine emergency evacuation training and drills, was intended to instill the discipline, confidence, and skills necessary for miners to survive a mine emergency.

Since the refuge alternatives rule became effective on March 2, 2009, refuge alternatives have been placed in underground coal mines across the country. During this time, mine operators, miners, manufacturers, MSHA, state governments, NIOSH, and other parties have gained experience with training miners under the existing rule. To benefit from this experience, MSHA requests public comment on the frequency of training for miners to deploy and use refuge alternatives including, but not limited to, the following issues:

1. With what frequency does motor task (hands-on) training need to be conducted to permit miners to develop and maintain the skills necessary to reliably and effectively deploy and use a refuge alternative in an emergency? If you believe that such training on an annual basis is insufficient, describe ways, if any, that quarterly training could be enhanced to allow miners to develop and maintain the necessary motor task skills when provided in conjunction with annual training.

2. With what frequency does expectations training need to be conducted to give miners the experience necessary to reduce the level of panic and anxiety that otherwise may accompany the deployment and use of a refuge alternative in an emergency?

3. With what frequency does decision-making training need to be conducted so that, in an emergency, miners understand that the refuge alternative is a last resort when escape from the mine is impossible?

4. Describe any advantages, disadvantages, and costs that would be associated with conducting motor task (hands-on), decision-making, and/or expectations training more frequently than once per year.

5. Based on your experience, has the quarterly training on procedures for deploying and using the refuge alternative reinforced annual motor task (hands-on), decision-making, and expectations training? If so, how? If not, why not?

6. Based on your experience, how long does it take to provide quarterly training and annual motor task (hands-on), decision-making, and expectations training for the types of refuge alternatives used in your mine? What is the cost of each type of training, including training materials?

7. What problems or issues have miners encountered during required quarterly or annual training?

Please provide any other data or information that you think would be useful to MSHA as the Agency evaluates the effectiveness of its regulations and standards related to training miners to deploy and use refuge alternatives in underground coal mines.

List of Subjects in 30 CFR Part 75

Coal mines, Mine safety and health, Reporting and recordkeeping requirements, Safety, Training programs, Underground mining.

AUTHORITY: 30 U.S.C. 811.

Dated: August 2, 2013.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7 and 75

RIN 1219-AB79

Refuge Alternatives for Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for information.

SUMMARY: The Mine Safety and Health Administration (MSHA) is requesting data, comments, and information on issues and options relevant to miners' escape and refuge that may present more effective solutions than the existing rule during underground coal mine emergencies. The Agency continues to reiterate that in the event of an underground coal mine emergency, a miner should seek escape as the first line of defense. Responses to this Request for Information (RFI) will assist MSHA in determining if changes

to existing practices and regulations would improve the overall strategy for survivability, escape, and training to protect miners in an emergency. MSHA will review the comments to determine what actions, if any, the Agency will take in response to comments.

DATES: Comments must be received by midnight Eastern Daylight Saving Time on October 7, 2013.

ADDRESSES: Comments and informational material may be sent to MSHA by any of the following methods. Clearly identify all submissions in the subject line of the message with RIN 1219-AB79.

- *Federal E-Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Facsimile:* 202-693-9441.

- *Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939. For hand delivery, sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT:

George F. Triebisch, Director, Office of Standards, Regulations, and Variances, MSHA, at triebisch.george@dol.gov (email); 202-693-9440 (voice); or 202-693-9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Concurrent Limited Reopening of the Record

Elsewhere in this issue of the **Federal Register**, MSHA is publishing a notice of the Agency's limited reopening of the record on a training provision in the Refuge Alternatives rule published December 31, 2008 (73 FR 80656). In response to a challenge to the final rule, the U.S. Court of Appeals for the District of Columbia Circuit directed MSHA to explain the basis for requiring some training annually rather than quarterly, or to reopen the record and allow additional public comment on the issue.

Availability of Information

MSHA will post all comments and information on the Internet without change, including any personal information provided. Access comments and information electronically at <http://www.regulations.gov> or on MSHA's Web site at <http://www.msha.gov/currentcomments.asp>. Review comments in person at the MSHA Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.