DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standard

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before November 20, 2023.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2023–0049 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2023–0049.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2023–020–C.

Petitioner: Peabody Gateway North Mining LLC, 12968 State 13, Coulterville, Illinois 62237.

Mine: Gateway North Mine, MSHA ID No. 11–03235, located in Randolph County, Illinois.

Regulation Affected: 30 CFR 75.507–1(a), (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of 30 CFR 75.507–1(a) to permit the use of non-permissible battery powered portable radios in return air outby the last open crosscut.

The petitioner states that:

(a) The petitioner currently uses Motorola and Kenwood permissible radios in its underground mine to enable communication between miners and management. Communication via these permissible radios facilitates movement of equipment, assignment of necessary work, communication with the surface control room, and communication in case of emergency situations such as injuries.

(b) Some sections of the mine use two continuous mining machines, and the use of radios permits coordination between the two continuous mining machines and coordination of the coal hauler, as well as communication near working pillars.

(c) In addition to using the radios, the petitioner uses wired communication systems, as well as the communication and tracking systems required in the mine's Emergency Response Plan.

(d) Effective communication is critical to the safety of the miners at the mine.

(e) Motorola and Kenwood have discontinued the manufacture and sale of the MSHA approved permissible radios. These radios were the only permissible radios available for the underground coal mine industry.

The petitioner proposes the following alternative method:

(a) Non-permissible portable radios to be used include:

(1) Motorola XPR 3300e, XPR 3500e, XPR 7350e, XPR 7380e, and XPR 580e. HAZ LOC certified by UL standards ANSI/TIA 4950 and CAN/CSA 22.2 No. 157–92. Classification Rating Division 1, Class I, Groups C, D; Class II Group E, F, G; Class III T3C. Tomb = 25 degrees Celsius to 60 degrees Celsius and Classification Rating Division 2, Class 1, Groups A, B, C, D. Intrinsically safe when used with Motorola battery PMNN4489A.

(2) New R7 portable radios. HAZ LOC certified of UL standards ANSI/TIA 4950 and CAN/CSA 22.2 No. 157–92. Classification Rating Division 1, Class I, Groups C, D; Class II Group E, F, G; Class III T3C. Tomb = 25 degrees Celsius to 60 degrees Celsius and Classification Rating Division 2, Class 1, Groups A, B, C, D. Intrinsically safe when used with Motorola battery PMN 4810.

(3) Other testing and diagnostic equipment may be used if approved in advance by the District Manager.

(b) All non-permissible testing and diagnostic equipment used in the return air outby the last open crosscut shall be examined by a qualified person as defined in 30 CFR 75.153 prior to use to ensure the equipment is being maintained in a safe operating condition. The examination results shall be recorded in the weekly examination book and made available to MSHA and the miners at the mine.

(c) A qualified person as defined in 30 CFR part 75.151 shall continuously monitor for methane immediately before and during the use of non-permissible radios in the return air outby the last open crosscut.

(d) Non-permissible radios shall not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while the non-permissible electronic equipment is being used, the equipment shall be de-energized immediately and withdrawn from the affected area.

(e) All hand-held methane detectors shall be MSHA approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(f) All radios shall be used in accordance with the safe use procedures recommended by the manufacturer.

(g) Personnel who use non-permissible radios shall be trained to recognize the hazards and limitations associated with use of the equipment.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same

measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

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DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before November 20, 2023.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2023–0051 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments for MSHA–2023–0051.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov*.
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

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I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2023–022–C.

Petitioner: Peabody Midwest Mining, LLC, CR 725 East, Francisco, Indiana 47699.

Mine: Francisco Underground Pit, MSHA ID No. 12–02295, located in Gibson County, Indiana.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electrical equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of 30 CFR 75.1002(a) to permit the use of non-permissible battery powered portable radios on the longwall face or within 150 feet of pillar workings.

The petitioner states that:

(a) The petitioner currently uses Motorola and Kenwood permissible radios in its underground mine to enable communication between miners and management. Communication via these permissible radios facilitates movement of equipment, assignment of necessary work, communication with the surface control room, and communication in case of emergency situations such as injuries.

(b) Some sections of the mine use two continuous mining machines, and the use of radios permits coordination between the two continuous mining machines and coordination of the coal hauler, as well as communication near working pillars.

(c) In addition to using the radios, the petitioner uses wired communication systems, as well as the communication and tracking systems required in the mine's Emergency Response Plan.

(d) Effective communication is critical to the safety of the miners at the mine.

(e) Motorola and Kenwood have discontinued the manufacture and sale of the MSHA approved permissible radios. These radios were the only permissible radios available for the underground coal mine industry.

The petitioner proposes the following alternative method:

(a) Non-permissible portable radios to be used include:

(1) Motorola XPR 3300e, XPR 3500e, XPR 7350e, XPR 7380e, and XPR 580e. HAZ LOC certified by UL standards ANSI/TIA 4950 and CAN/CSA 22.2 No. 157–92. Classification Rating Division 1, Class I, Groups C, D; Class II Group E, F, G; Class III T3C. Tomb = 25 degrees Celsius to 60 degrees Celsius and Classification Rating Division 2, Class 1, Groups A, B, C, D. Intrinsically safe when used with Motorola battery PMNN4489A.

(2) New R7 portable radios. HAZ LOC certified of UL standards ANSI/TIA 4950 and CAN/CSA 22.2 No. 157–92. Classification Rating Division 1, Class I, Groups C, D; Class II Group E, F, G; Class III T3C. Tomb = 25 degrees Celsius to 60 degrees Celsius and Classification Rating Division 2, Class 1, Groups A, B, C, D. Intrinsically safe when used with Motorola battery PMN 4810.

(3) Other testing and diagnostic equipment may be used if approved in advance by the District Manager.

(b) All non-permissible radios used within 150 feet of pillar workings shall be examined by a qualified person as defined in 30 CFR 75.153 prior to use to ensure the equipment is being maintained in a safe operating condition. The examination results shall be recorded in the weekly examination book and made available to MSHA and the miners at the mine.

(c) A qualified person as defined in 30 CFR part 75.151 shall continuously monitor for methane immediately before and during the use of non-permissible radios within 150 feet of pillar workings.

(d) Non-permissible radios shall not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while the non-permissible radios are being used, the radios shall be de-energized immediately and withdrawn from the affected area.

(e) All hand-held methane detectors shall be MSHA approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(f) All radios shall be used in accordance with the safe use procedures recommended by the manufacturer.

(g) Personnel who use non-permissible radios shall be trained to