

rulemaking at <http://www.msha.gov/currentcomments.htm>.

Section 75.1501 requires an operator to designate a responsible person to take charge when a mine emergency involving a fire, explosion, or gas or water inundation presents an imminent danger to miners. Section 75.1501 also requires that miners receive instruction on the identity of the responsible person designated by the operator for their workshift.

Section 75.1101-23 was redesignated as § 75.1502 and revised to include all mine emergencies resulting from a fire, an explosion, or a gas or water inundation (67 FR 76658, Dec. 12, 2002). This final rule § 75.1502 requires that firefighting and evacuation plans address these emergencies; that miners be trained in all elements of the mine emergency evacuation and firefighting plan; and that mine operators instruct miners regarding any revisions to the plan after its submission to MSHA for approval.

Section 48.8, paragraph (b)(4), is amended to include in the annual refresher training of miners, a review of the emergency evacuation and firefighting plans in effect at the mine.

MSHA held four public hearings on the proposed rule in Lexington, Kentucky on February 4, 2003; Grand Junction, Colorado on February 6, 2003; Charleston, West Virginia on February 11, 2003; and Pittsburgh, Pennsylvania on February 13, 2003. The comment period closed on February 28, 2003. This final rule addresses all of the relevant comments received on the proposed rule.

Waiver of Delayed Effective Date

In accordance with the requirements of § 553(d) of the Administrative Procedure Act (5 U.S.C. 553), MSHA publishes a final rule in the **Federal Register** at least 30 days before its effective date. However, § 553(d)(3) of the Administrative Procedure Act permits an agency to dispense with this requirement when the agency has found that there is good cause to do so, and it publishes its finding in the **Federal Register** with the final rule. As explained below, MSHA finds that good cause exists to make this final rule effective upon its publication today in the **Federal Register**.

One of the primary purposes of the delayed effective date requirement is to provide affected persons or industries with adequate time to prepare for compliance with the rule. MSHA's final rule on Emergency Evacuations published in today's **Federal Register** is very similar in all major respects to the ETS, which has been in effect since

December 12, 2002, and underground coal mine operators have been complying with the ETS during those eight months. Therefore, MSHA finds that no additional time is necessary for underground coal mine operators to come into compliance with the requirements of this rule because the underground coal mine industry is already familiar with the major provisions of the final rule.

In addition, the agency's ETS on Emergency Evacuations will expire on September 12, 2003. The expiration of the ETS would leave a critical void in miners' safety if the final rule is not effective by that date. For these reasons, MSHA finds good cause to waive the requirement for a delayed effective date, thereby allowing the final rule to be effective today, upon publication in the **Federal Register**.

I. Discussion of the Final Rule

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 in Alabama 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 move. Miners from other parts of the mine responded in an ill-coordinated effort. The response was marked by confusion. For example, after the Carbon Monoxide (CO) Room operator (monitoring the CO monitoring system at the mine) was notified of the explosion, he 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 traveled towards the initial explosion site and these miners entered the affected area without gas detection equipment. Seven additional miners were directed to travel to the emergency area, but the 6:15 p.m. explosion occurred before they arrived in the area of the initial 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 additional miners died from the second explosion as they were attempting to reach the injured miner.

MSHA's accident investigation team 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 determined that gas detection equipment was not found on any of the fatally injured miners nor did the accident investigation find such equipment in the affected section where the explosion occurred. Gas detection equipment is essential to determine the composition of the mine atmosphere and to 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.

While one commenter to the proposed rule stated that the Jim Walter accident was an "aberrational situation," MSHA notes that every mine accident is unique and may present different facts and circumstances. MSHA has carefully reviewed this accident, and believes that the final rule is appropriately proactive in developing a systematic procedure for responding to mine emergencies. MSHA has determined that had a 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 rule, all miners underground who were not essential to providing a mine emergency response to the explosion would have immediately evacuated the mine. In addition, the responsible person could 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 should not re-enter the emergency areas without instruction and appropriate safety equipment.

On July 31, 2000, four explosions occurred at the Willow Creek mine in Utah. The initial explosion and subsequent fire occurred approximately seven minutes before the later explosions that killed two miners. One commenter to the proposed rule noted that it was inappropriate to use the Willow Creek accident to justify the ETS because the commenter believed the mine responded appropriately and evacuated expeditiously. After careful review of the accident, MSHA has concluded that the fatalities may have