

appropriate. Once the miners have been evacuated, the standard has no further application during rescue/recovery operations, mine rescue team activities, or emergency operations being orchestrated by upper mine management. The rule would next apply when miners resume work underground, whether that be when the mine returns to normal operation, or when miners are performing underground construction or rehabilitation after the immediate mine emergency has ended.

Paragraph (b) of § 75.1501 of the final rule requires that the responsible person initiate and conduct an immediate mine evacuation when there is a mine emergency that presents an imminent danger to miners due to fire, explosion, or gas or water inundation. The rule also requires that only properly trained and equipped persons essential to respond to the mine emergency may remain underground. This paragraph is unchanged from the proposed rule and ETS.

Several comments were received questioning whether a mine-wide evacuation is always required due to any occurrence of fire, explosion, or water or gas inundation. MSHA's final rule concludes that evacuation is required for mine emergencies that present an imminent danger to miners due to fire, explosion, or gas or water inundation. MSHA has concluded that miners can be exposed to serious danger when they remain underground or improperly re-enter affected mine areas during mine emergencies that present an imminent danger due to fire, explosion, gas or water inundation. However, not every imminent danger results in a mine-wide evacuation under this rule. Some commenters urged that the rule be reworded, believing that any underground imminent danger would trigger a full mine-wide evacuation. MSHA does not agree. An imminent danger that affects a limited area, such as a section, may result in withdrawal from the affected area, but would not necessarily be a mine emergency requiring mine-wide evacuation.

Several commenters suggested that a definition of imminent danger should be included in the rule. Section 3(j) of the Mine Act already defines an imminent danger, making further definitions unnecessary. The concept of imminent danger has existed since 1969 and is well understood by mine operators, miners, and others in the mining community. The term "imminent danger" is defined in the Mine Act, section 3(j), as "the existence of any condition or practice in a coal or other mine which could reasonably 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.

MSHA agrees with the commenters who stated that not every mine fire, explosion, or gas or water inundation hazard may result in a mine emergency requiring a mine-wide evacuation. For example, unplanned mine fires not extinguished within 30 minutes of discovery are reportable to MSHA under 30 CFR part 50. Such fires may not present an imminent danger to miners and, therefore, may not constitute a mine emergency under this final rule. It is when fire, explosion, or gas or water inundations present an imminent danger to miners that MSHA expects that an immediate mine evacuation be initiated. For example, a gas or water inundation of unknown potential, or an explosion that raises the question of unknown damage to critical ventilation controls or interrupted ventilation, should result in a mine-wide evacuation. However, a small-scale fire at an electrical connection, while it may be a local emergency, may not immediately be a mine emergency that presents an imminent danger to all miners underground.

One commenter questioned whether accumulations of methane at elevated concentrations would be considered a gas inundation such that a mine-wide evacuation would be required. An accumulation of methane in a working place, such as the face, or the conveyor belt haulageway, is not a gas inundation. In general, an accumulation of methane results from inadequate ventilation or airflow. A gas inundation can occur even when there is adequate ventilation or airflow and is not limited to only methane gas. Current standards, specified in § 75.323, *Actions for excessive methane*, specify actions to be taken when methane above certain levels is found in a working place or return aircourses. Similarly, a commenter questioned whether a small amount of water entering a mine might be considered an inundation. Typically, it would not. In most cases, a broken water pipe spilling into the mine, or normal mine water accumulations, would not be considered an inundation requiring an emergency evacuation. However, if water inflows blocked main aircourses or bleeder systems, a mine emergency requiring evacuation could result.

One commenter questioned whether an evacuation could ever be interrupted once started. In the case where an evacuation has commenced due to a false alarm, or the emergency comes

under control very quickly, the responsible person could interrupt the evacuation.

Several commenters believed that the ETS fosters an atmosphere of "every man for himself" and that chaotic unorganized evacuations will result. Other commenters believed that the rule encourages evacuation as the first reaction to a problem. To the contrary, the rule promotes organized evacuations and controlled responses. By requiring a responsible person to take charge and by improving plans and training, MSHA believes that timely and orderly evacuations will result.

Several commenters suggested that the word "conduct" found in proposed § 75.1501(b) should be deleted from the phrase "the responsible person shall initiate and conduct an immediate mine evacuation. \* \* \*" These commenters suggested that the responsible person should only be required to initiate the evacuation. Some commenters believed that the responsible person was required to make all communication contacts and perform all other duties without any assistance. The responsible person can, of course, obtain whatever assistance is needed to contact and evacuate miners safely and quickly. The final rule retains the phrase "initiate and conduct." "Conduct" is used to assure that the responsible person remains in control during the evacuation and remains responsible for assuring that the evacuation actually occurs. "Conduct" is not used to mean or imply that the responsible person is prohibited from obtaining assistance during the emergency. The responsible person should utilize any resources needed for evacuation and should obtain assistance as appropriate.

Other commenters believed that the rule prohibits any involvement of upper mine management and prohibits contact with off-site management. The final rule, like the proposed rule, is constructed to assure that an evacuation order by the responsible person would not be usurped and to clarify that concurrence or approval by off-site management is not necessary, as it could result in a needless delay. This does not, however, prohibit communication with upper management located on or off-site. Neither does the rule prohibit upper management from organizing or deploying a mine rescue team for recovery efforts. As discussed elsewhere in this preamble, the final rule is intended to address evacuation of miners where a mine emergency exists that presents an imminent danger, and an initial response—if a response is warranted. However, the rule does not