

address mine rescue team deployment and mine rescue and recovery efforts in the aftermath of an emergency evacuation, as these activities could be more appropriately controlled by other mine officials, and other provisions in the Mine Act. These issues are beyond the scope of this rulemaking.

Numerous comments were received regarding the phrase contained in proposed § 75.1501(b), "properly trained and equipped." This phrase is retained in the final rule. Stated in full, the final paragraph requires that "[o]nly properly trained and equipped persons essential to respond to the mine emergency may remain underground." Some commenters thought the phrase would limit any response to mine rescue teams. Other commenters stated that waiting for mine rescue teams would allow even small fires to propagate, creating larger, unnecessary hazards. The reason for this requirement is derived from the circumstances surrounding the Jim Walter Resources No. 5 mine accident where a party of miners was believed to have entered 4 Section, where the air quality was undetermined, without gas detectors. The requirement is intended to prevent similar occurrences.

The final rule does not limit responses to mine rescue teams and does not prohibit mine emergency responses. The final rule does, however, require that persons responding to mine emergencies be equipped with appropriate equipment and trained in its use. Several commenters requested that a definition for "properly trained and equipped" be included in the rule. MSHA believes that a definition is not necessary, and could hamper flexibility on the part of mine operators to respond to rapidly changing or different emergency situations. While it is impractical to list every possible emergency scenario, the equipment required should be apparent to those directing or engaged in any response, dependent on the nature of the emergency and the particular conditions. As an example, where miners are entering an area where ventilation controls have been destroyed or the air quality is unknown, responders should be equipped with gas detectors and should know how to operate the detectors. Miners responding to fight a fire should have gas detectors as well as firefighting equipment—and should know how to use the equipment. Otherwise, the responders could be unnecessarily exposed to hazards and the equipment could have limited effect.

One commenter suggested that each miner participating in a response should

be provided with equipment—such as a gas detector. Other comments suggested a clarification that only one person in a response party, probably the leader, should be required to have the needed equipment. The Agency concludes that, in the gas detector example, sufficient gas detectors should be provided so that the group can adequately monitor the atmosphere to which they are exposed. The size of the group and the extent to which they are close together or dispersed will affect the number of gas detectors needed. In general, the quantity of equipment must be at least sufficient to protect miners from the reasonably anticipated hazards.

Section 75.1501(c) of the final rule requires that the mine operator instruct all miners about the identity of the responsible person designated by the operator for their workshift. The mine operator shall inform miners before the start of their workshift if the identity of the responsible person changes. The ETS also included an implementation date that has been deleted from this final rule since it is no longer necessary. Except for the elimination of the implementation date, this paragraph of the final rule remains unchanged from the ETS and the proposed rule.

A number of comments were submitted in response to proposed paragraph (c). A typical comment was that the responsible person should be identified by title—rather than by name. It is acceptable to develop plans and procedures where the responsible person is identified by title, so long as miners know the identity of the responsible person. A mechanism must be in place to inform the miners of the identity of the responsible person for their workshift. Should an emergency occur, a miner must be able to page a specific person rather than paging for a mine foreman or some other title.

Miners can be informed of the identity of the responsible person for their workshift in a number of ways. A verbal announcement can be made before traveling underground, a prominent chalkboard at the check-in/check-out board could indicate the name of the responsible person, or other systems could be used. One commenter believed that if MSHA asked a miner to name the responsible person, an incorrect response would result in a citation. The comment indicated that the memory of a miner is outside the control of the mine operator. MSHA does not anticipate using such a quiz for citation purposes. When it becomes apparent that several miners are unaware of who is designated the responsible person or how the notification system works, the system

and its effectiveness should be reviewed. The rule recognizes that in many cases, after the responsible person is designated and the miners informed, the responsible person's identity might not change for extended periods of time.

Several commenters asked how miners would be informed of any unexpected redesignation of the responsible person during the shift. To meet the requirement and objective of the rule, miners must be informed of any unexpected change in the identity of the responsible person. One way to inform the miners of the change would be to contact the underground supervisors, instructing them to inform their crews. It is understood that every miner cannot be instantly informed and that miners traveling or working in remote locations may not be immediately informed. However, reasonable efforts must be made for supervisors to inform underground miners or their work crews when an unexpected change in the responsible person occurs during the shift.

Paragraph (d) of final § 75.1501 provides that nothing in this section shall be construed to restrict the ability of other persons in the mine, in addition to the responsible person, to warn of an imminent danger that warrants evacuation. This paragraph is unchanged from the ETS and the proposed rule. This provision recognizes that there will be mine emergencies which present an imminent danger to miners due to fire, explosion, or gas or water inundation warranting a warning by someone other than the responsible person under § 75.1501(a). For example, at the Quecreek Mine inundation accident that occurred July 24, 2002, miners from the affected section rapidly warned miners in the other working section of a water inundation, enabling the miners in the other working section to quickly escape the mine unharmed. These actions are consistent with the approach of final paragraph (d) of § 75.1501 that recognizes that any person may warn others of an imminent danger which warrants evacuation. Had any delays occurred at Quecreek in warning the miners, tragic results might have ensued. This paragraph clarifies that obtaining approval or concurrence from the responsible person is not required when circumstances warrant.

A commenter suggested MSHA incorporate the Occupational Safety and Health Administration's (OSHA's) 29 CFR 1920.120 titled *Hazardous waste operations and emergency response* into MSHA's final rule. OSHA's rule provides for defining an Incident Command System, a chain of command,