

substance specific control plans, quality control and assessment plans, and other similar structured activities. MSHA has considered this approach and believes that the approach adopted in the final rule is appropriate for the mining industry. Mine emergency and firefighting programs developed under § 75.1502 may include assigned personnel for specific tasks. Mine rescue programs have demonstrated that their use is appropriate in addressing unique mine environments.

Section 75.1502 Mine Emergency Evacuation and Firefighting Program of Instruction

Final § 75.1502, *Mine emergency evacuation and firefighting program of instruction*, was derived from § 75.1101–23, *Program of instruction; location and use of fire fighting equipment; location of escapeways, exits and routes of travel; evacuation procedures; fire drills*. The program of instruction is also referred to as the emergency evacuation plan.

Under the ETS and proposed rule, operators were to immediately revise existing firefighting and evacuation plans, retrain miners, and submit the revised plan to MSHA for review and approval. This process was a departure from the normal plan approval process whereby MSHA approval is required prior to implementation. The ETS implementation dates have passed, and the dates listed in the ETS are deleted from the final rule. Plans previously revised to comply with the ETS should need no further revision to comply with the final rule.

Final paragraph § 75.1502(a) explicitly requires underground coal mine operators to “adopt and follow” an approved mine emergency evacuation and firefighting program of instruction. The addition of the phrase “and follow” is a change from the ETS and the proposed rule, which stated that underground coal mine operators must “adopt” a program of instruction. Despite the lack of the phrase “and follow” in the ETS and the proposed rule, it has been MSHA’s intent that mine operators follow their approved plans in the event of a mine emergency. The concurrent promulgation of § 75.1501 and § 75.1502 at the proposed rule stage demonstrates MSHA’s intent that the standards function in unison. For example, under § 75.1501, the responsible person is required to initiate and conduct an immediate mine evacuation in the event that a mine emergency due to fire, explosion, or gas or water inundation presents an imminent danger to miners. The mine emergency evacuation and firefighting

program of instruction would serve little purpose if the responsible person did not initiate and conduct the mine evacuation in accordance with the program of instruction. There would be little, if any, benefit to miners’ safety if the responsible person were to initiate and conduct an uncoordinated, disorganized evacuation. In fact, no program of instruction would be necessary for such an evacuation. Although § 75.1501 and § 75.1502 were always intended to operate in an integrated manner, the agency is aware that the intent is better expressed by use of the phrase “adopt and follow.” The explicit requirement that an operator “follow” the approved program of instruction once it is adopted is reflected in final § 75.1502(a). This requirement is consistent with MSHA’s practice under existing § 75.370, *Mine ventilation plan; submission and approval*, which requires mine operators to follow their approved ventilation plan once developed.

As with other mine plans, subsequent changes or revisions may not be implemented at the mine until approved by the District Manager of the Coal Mine Safety and Health District in which the mine is located and the affected miners have been instructed in the revised provisions.

Paragraph (a) of § 75.1502 of the final rule adopts the language of the ETS and proposed rule with only minor changes that clarify the rule’s intent. Under paragraph (a), MSHA retains the requirement of the ETS and the proposed rule that the existing program of instruction include the proper evacuation procedures in the event of a mine emergency. In addition, final paragraph (a) of § 75.1502 retains the requirements of former § 75.1101–23(a), the ETS, and the proposed rule, that the program of instruction include procedures to be followed regarding the location and use of firefighting equipment, location of escapeways, exits, and routes of travel to the surface.

MSHA expects that the plan must, at a minimum, cover the types of mine emergencies presenting an imminent danger to miners due to fire, explosion, or gas or water inundation. Mine operators may choose to cover in their plan other types of mine emergencies when evacuations would be appropriate as well.

A few commenters stated their belief that the purpose of the rule was to ensure that MSHA could second-guess decisions made during emergencies and issue citations. Typically, these commenters discussed the 2000 Willow Creek explosions (previously discussed in this preamble) and the January 21,

1986 fire at Jim Walter Resources No. 3 mine. At the Jim Walter Resources No. 3 mine, a fire occurred along the No. 1 longwall section face. The fire was apparently started by a cutting torch being used to dismantle the longwall conveyor. Two miners were injured as a result of the fire. Efforts to control the fire were unsuccessful and all miners were withdrawn from the mine. On January 22, 1986, it was decided to partially seal the mine. The seals were completed on February 16, 1986. In both cases, miners remained underground in hazardous conditions in an effort to control mine fires, despite the hazard of a major explosion. MSHA concluded that the § 75.1101–23 plan was not violated at either Willow Creek or Jim Walter No. 3. Similarly, under the final rule, MSHA will assess the overall evacuation response and actions taken to protect the safety of the miners, recognizing that an undesirable outcome is not necessarily a violation of the provisions of the mine emergency and firefighting program of instruction. MSHA continues to believe that increased awareness of responsibility for mine evacuations, improved plans and training will help eliminate fatal and non-fatal injuries during mine emergencies.

Final paragraphs (1) through (4) of paragraph (a), specify general topics to be developed and included in the program of instruction or plan. These include: (1) Mine emergency evacuation for mine emergencies presenting an imminent danger to miners due to fire, explosion, or gas or water inundation; (2) Evacuation of all miners not required for a mine emergency response; (3) Rapid assembly and transportation of necessary miners, fire suppression equipment, and rescue apparatus to the scene of the mine emergency; and, (4) Operation of the fire suppression equipment available in the mine. These paragraphs are unchanged from the existing ETS and proposed rule. MSHA will publish, and make available at its Web site, a model plan as an example. Mine operators should develop plans that are suitable to the particular conditions existing at their mine. For example, a mine not employing an atmospheric monitoring system would not discuss how an AMS would be integrated into the plan. Similarly, a mine that has deployed a Personal Emergency Device (PED) system should include a discussion of how the system is integrated into its procedures for notification and evacuation.

As required under final paragraph (a)(1), the plan requires that all miners on all shifts be acquainted with procedures for mine emergency