

SUPPORTING STATEMENT
Refuge Alternatives for Underground Coal Mines

This information collection request (ICR) is a renewal of OMB Control Number 1219-0146, Refuge Alternatives (RA) for Underground Coal Mines, which was approved on January 14, 2009. Title 30 CFR 75.1506 requires mine operators to provide refuge alternatives and § 75.1507 requires the development and implementation of emergency response plans.

The following provisions are addressed by the ICR:

§ 75.1506(c)(2)	Refuge alternatives
§ 75.1507	Emergency Response Plan; refuge alternatives.
§ 75.1508(a) and (b)	Training and records for examination, maintenance, and repair of refuge alternatives.

A. JUSTIFICATION

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Each underground coal mine has an emergency response plan (ERP) and refuge alternative(s) (RA) that protect miners when escape from a mine during a mine emergency is not possible by providing secure spaces with isolated atmospheres that create life-sustaining environments.

Many of the requirements included in the final rule published on December 31, 2008 (73 FR 80698) have been subsumed into existing paperwork packages.

§ 7.503	Application requirements – 1219-0066
§ 75.221(a)(12)	Roof control plan information – 1219-0004
§ 75.360(d)	Preshift examination at fixed intervals – 1219-0088
§ 75.372(b)(11)	Mine ventilation map - 1219-0073
§ 75.1200-1(n)	Additional information on mine map – 1219-0073
§ 75.1202-1(b)(4)	Temporary notations, revisions, and supplements – 1219-0073.

§ 75.1502(c) Mine emergency evacuation and firefighting program of instruction – 1219-0054 & 1219-0141.

§ 75.1505(a) and (b) Escapeway maps – 1219-0141

§ 75.1506(d) Roof control plans – 1219-0004

Transferred Burden Changes:

MSHA Regulatory Provision	OMB No.	Amount of Burden transferred (or to be transferred)	Date of transfer (or planned transfer)
§ 7.503/ Application requirements	1219-0066	2,700	Subsumed with last renewal of 1219-0066, 12/31/2011.
§ 75.221(a)(12)/ Roof control plan information Roof control plan information	1219-0004	280	Planned transfer pending approval of changes to 1219-0004 submitted 9/4/2102.
§ 75.360(d)/ Preshift examination at fixed intervals Preshift examination at fixed intervals	1219-0088	72,066	Subsumed with last renewal of 1219-0088, 7/31/12.
§ 75.372(b)(11)/ Mine ventilation map Mine ventilation map	1219-0073	356	Subsumed with last renewal of 1219-0073, 8/31/12.
§ 75.1200-1(n) / Additional information on mine map and § 75.1202-1(b)(4)/Temporary notations, revisions, and supplements and § 75.1505(a) and (b)/ Escapeway maps	1219-0073 & 1219-0141	912	Subsumed with last renewal of 1219-0073 on 8/31/12 and 1219-0141, 7/31/10.
§ 75.1502(c)/ Mine emergency evacuation and firefighting program of instruction Mine emergency evacuation and firefighting program of instruction – 1219-0054 & 1219-0141	1219-0141 & 1219-0054	280	Subsumed with last renewal of 1219-0141, 7/31/10 and 1219-0054 expected submission 10/2012.
§ 75.1506(d)/ Roof control plans	1219-0004	0 burden hours. Burden for 75.1506(d) was not listed in last supporting statement approved 1/14/09.	N/A

Section 75.1507 Emergency Response Plan; refuge alternatives. This section requires that the ERP provide detailed information about the RAs used in the mine. This

information assists miners, supervisors, emergency responders, and MSHA in assuring that all essential preparations are made and required materials are readily available and in working order. A mine operator may notify the District Manager and update the existing ERP if there is a need to locate a RA in a different location than the one identified in the ERP for that mine (as required by § 75.1506(c)(2)).

Section 75.1508 Training and records for examination, maintenance and repair of refuge alternatives and components.

Section 75.1508(a) requires the mine operator to certify that persons assigned to examine, maintain, and repair RAs and components are trained for those tasks. Training certifications assist MSHA in determining that persons received the required training. The training certification for persons assigned to examine RAs is integrated into existing requirements for preshift examinations of the mine under § 75.360 (OMB 1219-0088). The training certification for persons assigned to maintain and repair RAs is included in this package under § 75.1508(a).

Section 75.1508(b) requires a record of any maintenance and repair performed on a refuge alternative. This record assists MSHA in identifying design flaws or other weaknesses in the refuge alternative or its components that could adversely impact the safety of miners.

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

MSHA inspectors use the information from these records to verify that mine operators properly supply and maintain RAs, and in the event of an emergency, that miners will know when and where to seek refuge, that the immediate area of the refuge is secure from roof failure, and that maps are current and can be used by mine rescue teams to locate the sheltered miners.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

MSHA does not restrict mine operators from using any format or media for the collection of information. The records may be kept in a traditional format or stored electronically, provided they are secure and not susceptible to loss or alteration. MSHA encourages manufacturers and mine operators who store records electronically to provide a mechanism to allow the continued storage and retrieval of records for a number of years.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

MSHA integrated emergency response plans and RAs with existing requirements in 30 CFR Part 75 for roof control plans; preshift examinations; mine ventilation, escapeway, and mine maps; and mine emergency evacuation and firefighting program of instruction. MSHA has minimized the information collection burden of the rule on mine operators. Instead of integrating various requirements into existing information collection packages; MSHA could have required separate and duplicative requirements.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

The provisions of the Mine Act and MSHA standards apply to all operations, both large and small, because accidents, injuries, and illnesses can occur at any mine regardless of size. Congress intended that the Secretary enforce the law at all mining operations within its jurisdiction regardless of size and that information collection and recordkeeping requirements be consistent with efficient and effective enforcement of the Mine Act. [See Rep. No. 181, 95th Cong., 1st Sess. 28 (1977)]. Section 103(e) of the Mine Act, however, directs the Secretary of Labor not to impose an unreasonable burden on small businesses when obtaining any information under the Act. Accordingly, MSHA takes this direction and comments from the public into consideration when developing regulatory requirements. Different requirements for small and large mines exist when appropriate and consistent with ensuring the health and safety of miners. Similarly, MSHA approval regulations apply equally to all manufacturers to ensure that miners are protected from products that could cause a fire or explosion or other safety hazard related to use. The standard minimized the information collection burden on small mines by: (1) requiring RAs for outby areas to be within 1 hour of a refuge alternative or safe exit; and (2) providing an alternative method that allows mine operators to determine the location or need for outby RAs by evaluating the risk to outby miners.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The nature of underground coal mining is such that a mine emergency, such as a fire or explosion, can have disastrous consequences. The standards improve the mine operator's preparation for mine emergencies by providing a means to sustain miners trapped by an event that makes escape impossible. If the information collection is not conducted or is conducted less frequently, the Agency could not adequately implement the requirements of the MINER Act and 30 CFR Part 75.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **Requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**

- requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;
- in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

This collection of information is consistent with the guidelines in 5 CFR 1320.5.

- 8. If applicable, provide a copy and identify the data and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years – even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

MSHA published a 60-day *Federal Register* notice on January 31, 2012 (77 FR 4834). MSHA received one comment which suggested additional training is needed. MSHA will consider this information when either a regulatory or program change is made in the future.

- 9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

MSHA has provided no payments or gifts to the respondents identified in this collection.

- 10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

There is no assurance of confidentiality provided to respondents beyond that required by the Freedom of Information Act (5 U.S.C. 522). Collection of information under this rule is consistent with the guidelines in 5 CFR 1320.5.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.**

A. Refuge alternatives

Under § 75.1506(c)(2), the mine operator may request and the District Manager may approve a different location for the refuge alternative in the emergency response plan (ERP) required by § 75.1507. The Agency estimates that only a few of these requests are received annually and that they are appended to the existing mine-specific ERP for each mine. These costs are negligible.

B. Emergency Response Plan

Section 75.1507 requires that the mine emergency response plan (ERP) include information about the RAs used in the mine, including a description of the types of RAs; procedures for transporting, maintaining, and using them; the rated capacity and expected number of occupants; the duration of breathable air per person; and suitable locations. MSHA estimates that, on average, there will be 55 new mines opened

annually. The 55 mines will consist of 33 mines with 1-19 employees, 21 mines with 20-50 employees, and 1 mine with 501 employees.

MSHA assumes that, each emergency response plan submitted will require changes in response to MSHA's evaluation of those plans. The Agency assumes these submissions and revisions will be performed by a supervisor at an hourly wage of \$84.70 and, on average, will take 12 hours for mines with 1-19 employees, 24 hours for mines with 20-500 employees, and 36 hours for mines 501+ employees.

MSHA estimates that a clerical employee, working at a wage rate of \$26.00, will take a total of six minutes (0.10 hours) to copy and submit the emergency response plan information for mines with 1-19 employees, 12 minutes (0.20 hours) for mines with 20-500 employees, and 15 minutes (0.25 hours) for mines with 501+ employees.

Table 1 shows a total of 944 burden hours and an annualized cost of \$79,487 to revise the emergency response plan.

Table 1: Annual Burden Hours and Cost for Emergency Response Plans (ERP) to Include Refuge Alternatives (RAs) under § 75.1507

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Mine Size	No. of New Mines Needing RAs	Time for Supervisor or Time to Prepare ERP (in hrs.)	Clerical Time to File ERP (in hrs.)	Supervisor Annual Burden Hours ^a	Clerical Annual Burden Hours ^b	Supervisor Hourly Wage Rate	Clerical Hourly Wage Rate	Annual Burden Cost ^c
1-19	33	12	0.1	396	3	\$84.70	\$26.00	\$33,619
20-500	21	24	0.2	504	4	\$84.70	\$26.00	\$42,793
501+	1	36	0.3	36	1	\$84.70	\$26.00	\$3,075
Total	55			936	8			\$79,487

^a Supervisor Annual Burden Hours = col. b x col. c.

^b Clerical Annual Burden Hours = col. b x col. d.

^c Annual Burden Cost = (col. e x col. g) + (col. f x col. h).

C. Certification of Training

Section 75.1508 (a)(2) requires the mine operator to certify that persons assigned to examine, maintain, and repair RAs and components are trained.

MSHA estimates that training to examine RAs and components, and the certification of that training, will be integrated into the existing requirements that govern training for certified persons. Therefore, MSHA estimates no burden associated with this certification requirement.

For persons assigned to maintain and repair RAs and components, MSHA estimates that two miners per mine will receive training from the manufacturer as part of the purchase

agreement. MSHA estimates that a record of the training will be made by a supervisor at an hourly wage of \$84.70 and will take about 3 minutes (0.05 hours).

Table 2 shows 4 burden hours and an annual cost of \$339 for certification of training for the maintenance and repair of RAs and components.

Table 2: Annual Burden Hours and Cost to Certify Persons Trained in the Maintenance and Repair of Refuge Alternatives (RAs) and Components under § 75.1508(a)(2)

(a)	(b)	(c)	(d)	(e)	(f)
Mine Size	No. of New Mines Needing RAs	Supervisor Time to Certify Maintenance and Repair Training (in hrs.)	Annual Burden Hours ^a	Supervisor Hourly Wage Rate	Annual Burden Cost ^b
1-19	33	0.05	2	\$84.70	\$169
20-500	21	0.05	1	\$84.70	\$85
501+	1	0.05	1	\$84.70	\$85
Total	55		4		\$339

^a Annual Burden Hours = col. b x col. c.

^b Annual Burden Cost = col. d x col. e.

Section 75.1508(b) requires a record of each repair, including corrective action taken. MSHA estimates that the total number of repair and maintenance cases per year on all RAs will be: two in mines with 1-19 employees; 13 in mines with 20-500 employees; and two in mines with 501+ employees. MSHA estimates that recording of the maintenance and repair will be performed by a supervisor at an hourly wage of \$84.70 and will take about one minute (0.017 hours) for each event.

Table 3 shows 3 burden hours and an annual cost of \$255 for recording maintenance and repair of RAs.

Table 3: Annual Burden Hours and Cost to Make a Record of Maintenance and Repair of Refuge Alternatives and Components under § 75.1508(b)

(a)	(b)	(c)	(d)	(e)	(f)
Mine Size	Total Refuge Alternative and Component Maintenance and Repairs per Year	Supervisor Time to Make Record of Actions Taken (in hrs.)	Annual Burden Hours ^a	Supervisor Hourly Wage Rate	Annual Burden Cost ^b
1-19	2	0.017	1	\$84.70	\$85
20-500	13	0.017	1	\$84.70	\$85
501+	2	0.017	1	\$84.70	\$85
Total	17		3		\$255

^a Annual Burden Hours = col. b x col. c.

^b Annual Burden Cost = col. d x col. e.

SUMMARY OF BURDEN HOURS AND RELATED COSTS FOR ITEM 12

Table 4 provides a summary of the 951 annual burden hours. Table 5 provides a summary of the 127 responses and of the \$80,181 annual burden costs.

Table 4: Summary of Annual Burden Hours

Detail	Section	Burden Hours
Prepare & File Emergency Response Plan	75.1507	936
Certify Training to Transport, Maintain, and Repair RAs	75.1508(a)(2)	4
Record Repairs of RAs & Components	75.1508(b)	3
Total		943

Table 5: Summary of Annual Burden Costs

Detail	Section	Table	Units	Average No. of Responses per Year	Total No. of Responses per Year	Annual Burden Cost
Prepare & File Emergency Response Plan	75.1507	3	55	1	55	\$79,487
Certify Training to Transport, Maintain, & Repair RAs	75.1508(a)(2)	4	55	1	55	\$339
Record Repairs of RAs & Components	75.1508(b)	5	17	1	17	\$255
Total					127	\$80,081

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the

government, or (4) as part of customary and usual business or private practices.

Section 75.1507 requires that the emergency response plan (ERP) include the following for each refuge alternative and component: types and suitable locations of the units in use; procedures for transporting, maintaining, and using the unit; the unit's rated capacity; and duration of breathable air for each person. In addition the ERP will specify the methods for providing: breathable air; removal of carbon dioxide; backup oxygen controls and regulators; an airlock and breathable air in the airlock; sanitation facilities; harmful gas removal; monitoring of gas concentrations; and lighting.

For RAs, the ERP specifies that the breathable air components are MSHA approved, and the unit can withstand exposure to a flash fire of 300° Fahrenheit for three seconds. For RAs that sustain persons for only 48 hours, the ERP must describe advance arrangements that have been made to assure that persons who cannot be rescued within 48 hours will receive additional supplies to sustain them until rescued. The ERP also must specify that the refuge alternative is stocked with a specified amount of food and water per person, refuge alternative and component manuals, materials and tools sufficient to make repairs on the unit, and first-aid supplies.

MSHA estimates copy costs of \$0.15 per page. Postage costs are estimated to be \$1.00 for mines with 1-19 employees, \$2.00 for mines with 20-500 employees, and \$3 for mines with 501+ employees. MSHA calculates copy and postage costs per mine of about \$2.80 for mines with 1-19 employees, \$5.60 for mines with 20-500 employees, and \$8.40 for mines with 501+ employees.

Table 6 shows estimated annual cost of \$218 for mines to submit revised emergency response plans.

Table 6. Annual Copy and Postage Cost to Submit Revised Emergency Response Plans Including Refuge Alternatives (RAs) under § 75.1507

(a)	(b)	(c)	(d)
Mine Size	No. of Mines with RAs	Copy and Postage Cost per Mine to Submit Revised Emergency Response Plan	Annual Cost ^a
1-19	33	\$2.80	\$92
20-500	21	\$5.60	\$118
501+	1	\$8.40	\$8
Total	55		\$218

^a Annual Cost = col. b x col. c.

Table 7 shows a summary of the total Item 13 costs. The updated, estimated annual total cost for Item 13 is \$218.

Table 7: Summary of Item 13 Costs

Description	Section	Table	Annual Cost
Submission of Emergency Response Plan	75.1507	6	\$218
Total			\$218

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

There are no Federal costs associated with this collection of information package.

15. Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.

Itemized Changes in Annual Burden Hours to 1219-0146						
Changes in Estimates	Program Change (hours currently on OMB Inventory)	Program Change (New)	Difference	Adjustment (hours currently on OMB Inventory)	Adjustment (New)	Difference
Prepare & File Emergency Response Plan/ 75.1507				11,108	944	-10,164
Certify Training to Transport, Maintain, and Repair RAs/ 75.1508(a)(2)				27	4	-23
Record Repairs of RAs & Components/ 75.1508(b)				3	3	0
Sub-total	0	0	0	11,138	951	-10,187
Discretionary Changes						
§ 7.503/ Application requirements						
Added to 1219-0066, 12/31/2011.	2,700	0	-2,700			
§ 75.221(a)(12)/ Roof control plan information						
Added to 1219-0004, 09/04/2012.	280	0	-280			
§ 75.360(d)/ Preshift examination at fixed intervals	72,066	0	-72,066			

Added to 1219-0088, 07/31/2012.						
§ 75.372(b)(11)/ Mine ventilation map Mine ventilation map						
Added to 1219-0073, [provide date]	356	0	-356			
§ 75.1200-1(n) / Additional information on mine map and § 75.1202-1(b)(4)/Temporary notations, revisions, and supplements						
Added to 1219-0073, [provide date] and 1219-0141 [provide date]	912	0	-912			
§ 75.1502(c)/ Mine emergency evacuation and firefighting program of instruction Mine emergency evacuation and firefighting program of instruction						
Added to 1219-0054 [provide date] and 1219-0141. [provide date]	280	0	-280			
§ 75.1506(d)/ Roof control plans Burden for 75.1506(d) was not listed in last SS	0	0	0			
Sub-total	76,594	0	-76,594			
Grand Totals	76,594	0	-76,594	11,138	951	-10,187

MSHA has made no program changes since the promulgation of the final rule in December 2008. The estimates have changed primarily because many of the original requirements have been subsumed into other ICRs resulting in a decrease of 86,781 burden hours from 87,789 to 943 hours. Burden has been reduced on two of the three remaining provisions, 75.1507 and 75.1508(a)(2), due to decrease in respondents/mines in both from 507 to 55 with this renewal, and there has been no change to the burden in 75.1508(b). This renewal covers ERPs and RAs needed for new underground coal mines and the maintenance and repair of existing RAs.

16. For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

MSHA does not intend to publish the results of this information collection.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

There are no additional forms associated with this information collection; therefore, MSHA is not seeking approval to not display the expiration date for OMB approval of this information collection.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.

There are no certification exceptions identified with this information collection.

B. Collections of Information Employing Statistical Methods.

When Item 17 on the Form OMB 83-I is checked "Yes", the following documentation should be included in the Supporting Statement to the extent it applies to the methods proposed:

The collection of this information does not employ statistical methods.

RELEVANT STATUTORY AND REGULATORY PROVISIONS:

Consolidated Appropriations Act of 2008

SEC. 112. (a) * * *

(b) Not later than June 15, 2008, the Secretary of Labor shall propose regulations pursuant to section 315 of the Federal Coal Mine Health and Safety Act of 1969, consistent with the recommendations of the National Institute for Occupational Safety and Health pursuant to section 13 of the MINER Act (Public Law 109-236), requiring rescue chambers, or facilities that afford at least the same measure of protection, in underground coal mines. The Secretary shall finalize the regulations not later than December 31, 2008.

Mine Improvement and New Emergency Response (MINER) Act of 2006

SEC. 2. EMERGENCY RESPONSE.

* * * * *

“(a) * * *

“(b) **ACCIDENT PREPAREDNESS AND RESPONSE.—**

“(1) **IN GENERAL.—**Each underground coal mine operator shall carry out on a continuing basis a program to improve accident preparedness and response at each mine.

“(2) **RESPONSE AND PREPAREDNESS PLAN.—**

“(A) **IN GENERAL.—**Not later than 60 days after the date of enactment of the Mine Improvement and New Emergency Response Act of 2006, each underground coal mine operator shall develop and adopt a written accident response plan that complies with this subsection with respect to each mine of the operator, and periodically update such plans to reflect changes in operations in the mine, advances in technology, or other relevant considerations. Each such operator shall make the accident response plan available to the miners and the miners’ representatives.

“(B) **PLAN REQUIREMENTS.—**An accident response plan under subparagraph (A) shall—

“(i) provide for the evacuation of all individuals endangered by an emergency; and

“(ii) provide for the maintenance of individuals trapped underground in the event that miners are not able to evacuate the mine.

“(C) **PLAN APPROVAL.—**The accident response plan under subparagraph (A) shall be subject to review and approval by the Secretary. In determining whether to approve a particular plan the Secretary shall take into consideration all comments submitted by miners or their representatives. Approved plans shall—

“(i) afford miners a level of safety protection at least consistent with the existing standards, including standards mandated by law and regulation;

“(ii) reflect the most recent credible scientific research;

“(iii) be technologically feasible, make use of current commercially available technology, and account for the specific physical characteristics of the mine; and

“(iv) reflect the improvements in mine safety gained from experience under this Act and other worker safety and health laws.

“(D) PLAN REVIEW.—The accident response plan under subparagraph (A) shall be reviewed periodically, but at least every 12 months, by the Secretary. In such periodic reviews, the Secretary shall consider all comments submitted by miners or miners’ representatives and intervening advancements in science and technology that could be implemented to enhance miners’ ability to evacuate or otherwise survive in an emergency.

“(E) PLAN CONTENT – GENERAL REQUIREMENTS.—To be approved under subparagraph (C), an accident response plan shall include the following:

“(i) POST-ACCIDENT COMMUNICATIONS.—The plan shall provide for a redundant means of communication with the surface for persons underground, such as secondary telephone or equivalent two-way communication.

“(ii) POST-ACCIDENT TRACKING.—Consistent with commercially available technology and with the physical constraints, if any, of the mine, the plan shall provide for above ground personnel to determine the current, or immediately pre-accident, location of all underground personnel. Any system so utilized shall be functional, reliable, and calculated to remain serviceable in a post-accident setting.

“(iii) POST-ACCIDENT BREATHABLE AIR.—The plan shall provide for—

“(I) emergency supplies of breathable air for individuals trapped underground sufficient to maintain such individuals for a sustained period of time;

“(II) in addition to the 2 hours of breathable air per miner required by law under the emergency temporary standard as of the day before the date of enactment of the Mine Improvement and New Emergency Response Act of 2006, caches of self-rescuers providing in the aggregate not less than 2 hours per miner to be kept in escapeways from the deepest work area to the surface at a distance of no further than an average miner could walk in 30 minutes;

“(III) a maintenance schedule for checking the reliability of self rescuers, retiring older self-rescuers first, and introducing new self-rescuer technology, such as units with interchangeable air or oxygen cylinders not requiring doffing to replenish airflow and units with supplies of greater than 60 minutes, as they are approved by the Administration and become available on the market; and

“(IV) training for each miner in proper procedures for donning self rescuers, switching from one unit to another, and ensuring a proper fit.

“(iv) POST-ACCIDENT LIFELINES.— * * *.

“(v) TRAINING.— * * *.

“(vi) LOCAL COORDINATION.— * * *.

“(F) PLAN CONTENT – SPECIFIC REQUIREMENTS.—

“(i) IN GENERAL.—In addition to the content requirements contained in subparagraph (E), and subject to the considerations contained in subparagraph (C), the Secretary may make additional plan requirements with respect to any of the content matters.

“(ii) POST ACCIDENT COMMUNICATIONS.—Not later than 3 years after the date of enactment of the Mine Improvement and New Emergency Response Act of 2006, a plan shall, to be approved, provide for post accident communication between underground and surface personnel via a wireless two-way medium, and provide for an

electronic tracking system permitting surface personnel to determine the location of any persons trapped underground or set forth within the plan the reasons such provisions cannot be adopted. Where such plan sets forth the reasons such provisions cannot be adopted, the plan shall also set forth the operator's alternative means of compliance. Such alternative shall approximate, as closely as possible, the degree of functional utility and safety protection provided by the wireless two-way medium and tracking system referred to in this subpart.

“(G) PLAN DISPUTE RESOLUTION.— * * *
* * * * *

Federal Mine Safety & Health Act of 1977 (Mine Act)

MANDATORY SAFETY AND HEALTH STANDARDS

SEC. 101. (a) The Secretary shall by rule in accordance with procedures set forth in this section and in accordance with section 553 of title 5, United States Code (without regard to any reference in such section to sections 556 and 557 of such title), develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines.

INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING

SEC. 103. (h) In addition to such records as are specifically required by this Act, every operator of a coal or other mine shall establish and maintain such records, make such reports, and provide such information, as the Secretary or the Secretary of Health, Education, and Welfare may reasonably require from time to time to enable him to perform his functions under this Act. The Secretary or the Secretary of Health, Education, and Welfare is authorized to compile, analyze, and publish, either in summary or detailed form, such reports or information so obtained. Except to the extent otherwise specifically provided by this Act, all records, information, reports, findings, citations, notices, orders, or decisions required or issued pursuant to or under this Act may be published from time to time, may be released to any interested person, and shall be made available for public inspection.

RELEVANT REGULATORY PROVISIONS:

§ 75.1506 Refuge alternatives. [1219-0146] not included in Public Review Draft

(a) Each operator shall provide refuge alternatives and components as follows:

(1) Prefabricated self-contained units, including the structural, breathable air, air monitoring, and harmful gas removal components of the unit, shall be approved under 30 CFR part 7; and

(2) The structural components of units consisting of 15 psi stoppings constructed prior to an event shall be approved by the District Manager, and the breathable air, air monitoring, and harmful gas removal components of these units shall be approved under 30 CFR part 7.

(3) Prefabricated refuge alternative structures that states have approved and those that MSHA has accepted in approved Emergency Response Plans (ERPs) that are in service prior to March 2, 2009 are permitted until December 31, 2018, or until replaced, whichever comes first. Breathable air, air-monitoring, and harmful gas removal components of either a prefabricated self-contained unit or a unit consisting of 15 psi stoppings constructed prior to an event in a secure space and an isolated atmosphere that states have approved and those that MSHA has accepted in approved ERPs that are in use prior to March 2, 2009 are permitted until December 31, 2013, or until replaced, whichever comes first. Refuge alternatives consisting of materials pre-positioned for miners to deploy in a secure space with an isolated atmosphere that MSHA has accepted in approved ERPs that are in use prior to March 2, 2009 are permitted until December 31, 2010, or until replaced, whichever comes first.

(b) Except as permitted under paragraph (a)(3) of this section, each operator shall provide refuge alternatives with sufficient capacity to accommodate all persons working underground.

(1) Refuge alternatives shall provide at least 15 square feet of floor space per person and 30 to 60 cubic feet of volume per person according to the following chart. The airlock can be included in the space and volume if waste is disposed outside the refuge alternative.

Mining height (inches)	Unrestricted volume (cubic feet) per person*
36 or less.....	30
>36-<=42.....	37.5
>42-<=48.....	45
>48-<=54.....	52.5
>54.....	60

* Includes an adjustment of 12 inches for clearances.

(2) Refuge alternatives for working sections shall accommodate the maximum number of persons that can be expected on or near the section at any time.

(3) Each refuge alternative for outby areas shall accommodate persons reasonably expected to use it.

(c) Refuge alternatives shall be provided at the following locations:

(1) Within 1,000 feet from the nearest working face and from locations where mechanized mining equipment is being installed or removed except that for underground anthracite coal mines that have no electrical face equipment, refuge alternatives shall be provided if the nearest working face is greater than 2,000 feet from the surface.

(2) Spaced within one-hour travel distances in outby areas where persons work such that persons in outby areas are never more than a 30- minute travel distance from a refuge alternative or safe exit. However, the operator may request and the District Manager may approve a different location in the ERP. The operator's request shall be based on an assessment of the risk to persons in outby areas, considering the following factors: proximity to seals; proximity to potential fire or ignition sources; conditions in the outby areas; location of stored SCSRs; and proximity to the most direct, safe, and practical route to an intake escapeway.

(d) Roof and rib support for refuge alternative locations shall be specified in the mine's roof control plan. [1219-0004]

(e) The operator shall protect the refuge alternative and contents from damage during transportation, installation, and storage.

(f) A refuge alternative shall be removed from service if examination reveals damage that interferes with the functioning of the refuge alternative or any component.

(1) If a refuge alternative is removed from service, the operator shall withdraw all persons from the area serviced by the refuge alternative, except those persons referred to in Sec. 104(c) of the Mine Act.

(2) Refuge alternative components removed from service shall be replaced or be repaired for return to service in accordance with the manufacturer's specifications.

(g) At all times, the site and area around the refuge alternative shall be kept clear of machinery, materials, and obstructions that could interfere with the deployment or use of the refuge alternative.

(h) Each refuge alternative shall be conspicuously identified with a sign or marker as

follows:

(1) A sign or marker made of a reflective material with the word "REFUGE" shall be posted conspicuously at each refuge alternative.

(2) Directional signs made of a reflective material shall be posted leading to each refuge alternative location.

(i) During use of the refuge alternative, the atmosphere within the refuge alternative shall be monitored. Changes or adjustments shall be made to reduce the concentration of methane to less than 1 percent; to reduce the concentration of carbon dioxide to 1 percent or less and excursions not exceeding 2.5 percent; and to reduce the concentration of carbon monoxide to 25 ppm or less. Oxygen shall be maintained at 18.5 to 23 percent.

(j) Refuge alternatives shall contain a fire extinguisher that--

(1) Meets the requirements for portable fire extinguishers used in underground coal mines under this part;

(2) Is appropriate for extinguishing fires involving the chemicals used for harmful gas removal; and

(3) Uses a low-toxicity extinguishing agent that does not produce a hazardous by-product when activated.

§ 75.1507 Emergency Response Plan; refuge alternatives.

(a) The Emergency Response Plan (ERP) shall include the following for each refuge alternative and component:

(1) The types of refuge alternatives used in the mine, i.e., a prefabricated self-contained unit or a unit consisting of 15 psi stoppings constructed prior to an event in a secure space and an isolated atmosphere.

(2) Procedures or methods for maintaining approved refuge alternatives and components.

(3) The rated capacity of each refuge alternative, the number of persons expected to use each refuge alternative, and the duration of breathable air provided per person by the approved breathable air component of each refuge alternative.

(4) The methods for providing breathable air with sufficient detail of the component's capability to provide breathable air over the duration stated in the approval.

(5) The methods for providing ready backup oxygen controls and regulators.

(6) The methods for providing an airlock and methods for providing breathable air in the airlock, except where adequate positive pressure is maintained.

(7) The methods for providing sanitation facilities.

(8) The methods for harmful gas removal, if necessary.

(9) The methods for monitoring gas concentrations, including charging and calibration of equipment.

(10) The method for providing lighting sufficient for persons to perform tasks.

(11) Suitable locations of for the refuge alternatives and an affirmative statement that the locations are—

(i) Not within direct line of sight of the working face; and

(ii) Where feasible, not placed in areas directly across from, nor closer than 500 feet radially from, belt drives, take-ups, transfer points, air compressors, explosive magazines, seals, entrances to abandoned areas, and fuel, oil, or other flammable or combustible material storage. However, the operator may request and the District Manager may approve an alternative location in the ERP if mining involves two-entry systems or yield pillars in a longwall that would prohibit locating the refuge alternative out of direct line of sight of the working face.

(12) The maximum mine air temperature at each of the locations where refuge alternatives are to be placed.

(b) For a refuge alternative consisting of 15 psi stoppings constructed prior to an event in a secure space and an isolated atmosphere, the ERP shall specify that—

(1) The breathable air components shall be approved by MSHA; and

(2) The refuge alternative can withstand exposure to a flash fire of 300 degrees Fahrenheit (°F) for 3 seconds and a pressure wave of 15 pounds per square inch (psi) overpressure for 0.2 seconds.

(c) If the refuge alternative sustains persons for only 48 hours, the ERP shall detail advanced arrangements that have been made to assure that persons who cannot be rescued within 48 hours will receive additional supplies to sustain them until rescue. Advance arrangements shall include the following:

(1) Pre-surveyed areas for refuge alternatives with closure errors of less than 20,000:1.

(2) An analysis to indicate demonstrate that the surface terrain, the strata, the capabilities of the drill rig, and all other factors that could affect drilling are such that a hole sufficient to provide required supplies and materials reliably can be promptly drilled within 48 hours of an accident at a mine.

(3) Permissions to cross properties, build roads, and construct drill sites.

(4) Arrangement with a drilling contractor or other supplier of drilling services to provide a suitable drilling rig, personnel and support so that a hole can be completed to the refuge alternative within 48 hours.

(5) Capability to promptly transport a drill rig to a pre-surveyed location such that a drilled hole would be completed and located near a refuge alternative structure within 48 hours of an accident at a mine.

(6) The specifications of pipes, air lines, and approved fans or approved compressors that will be used.

(7) A method for assuring that within 48 hours, breathable air shall be provided.

(8) A method for assuring the immediate availability of a backup source for supplying breathable air and a backup power source for surface installations.

(d) The ERP shall specify that the refuge alternative is stocked with the following:

(1) A minimum of 2,000 calories of food and 2.25 quarts of potable water per person per day in approved containers sufficient to sustain the maximum number of persons reasonably expected to use the refuge alternative for at least 96 hours, or for 48 hours if advance arrangements are made under paragraph (c) of this section;

- (2) A manual that contains sufficient detail for each refuge alternative or component addressing in-mine transportation, operation, and maintenance of the unit;
- (3) Sufficient quantities of materials and tools to repair components; and
- (4) First aid supplies.

§ 75.1508 Training and records for examination, maintenance, and repair of refuge alternatives and components.

(a) Persons examining, maintaining, or repairing refuge alternatives and components shall be instructed in how to perform this work.

(1) The operator shall assure that all persons assigned to examine, maintain, and repair refuge alternatives and components are trained.

(2) The mine operator shall certify, by signature and date, the training of persons who examine, maintain, and repair refuge alternatives and components.

(b) At the completion of each repair, the person conducting the maintenance or repair shall make a record of all corrective action taken.

(c) Training certifications and repair records shall be kept at the mine for one year.