

Thank you for the opportunity to provide comments on this RFI. I have been involved with the refuge chamber program since inception including during the rule making process. I have been involved with most every refuge alternative manufacturer and many component manufacturers since day one. Im familiar with the MSHA approval process as Ive been involved with other MSHA approvals involving other divisions since the ACC opened. In response to the RFI please accept my comments on my experiences and my thoughts to improve the program.

Ive never been more confused with a program than this refuge alternative program. Im extremely glad that MSHA has finally come to their senses and is rethinking how you are considering saving miners lives. With the new NIOSH findings the writing is on the wall that the previous systems will not work and that the current RAs will not work.

My first suggestion is to abandon the deadline requiring Part 7 approved units by 12/31. Given that NIOSH recommends purging and temperatures which are unachievable in the current rule, it would be ludicrous to require mine operators to spend additional billions to meet standards no longer accepted by NIOSH.

Concerning the current rule, I agree with Mr. Sherer when several years ago he publicly stated, "this was the worst rule MSHA ever passed." The only thing worse than the rule itself is how MSHA is implementing the approval process. It is unstructured, confusing and unmanaged....I'll explain:

The approving division will not provide any approval criteria, leaving the applicants wondering what is needed next. There is no structure to how these products are approved nor have MSHA staff been trained on what is expected. Other divisions have approval criteria, desk aids and other documents designed to guide the applicants and investigators and to establish "limits." This division, even if these documents exist, will not provide them to applicants. They

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seem to make requirements up as they go. This division needs a leader who is willing to clearly answer questions and provide direction.

The reason manufacturers have not received approvals within a reasonable timeframe is because we don't know what is needed and because MSHA keeps changing what they feel is necessary. It is NOT because manufacturers are dragging their feet as MSHA would have everyone to believe. MSHA goes way above and beyond what the rule requires. I've received numerous discrepancy letters and each one brings up new items that should have been identified in the first review.

This division does not consider the rule when making approval decisions. They make stuff up as they go. Many, many times we've been told by Mr. Epperly that his decision is based on the "intent" of the rule. If it was what was intended, the rule should state so; clearly, concisely, and unambiguously. Instead, Mr. Epperly decides what he wants, makes up the requirement, then tries to justify it.

Also, Mr. Epperly has told us numerous times that he's requiring certain things because it benefits us in liability cases. Since when does MSHA care about the liability of a manufacturer. Liability is a matter between us and our counsel. He should stick to his purpose of approving units based on the rule that passed and not worry about my liability.

The most recent examples occurring over the past few months of MSHA changing the rules include: the need to address the build up of nitrogen, issues related to valves and regulators, requiring clean rooms, double sensors in monitors, concern with what parts are inside valves and regulators - even after these parts were accepted and approved by a third party expert ...which is what MSHA required- a third party evaluation and report. So, now MSHA is more of an expert than the experts. Why have an expert provide a report in the first place as required by the rule?

As I understand, MSHA recently started requiring a "clean room" based on ASTM criteria. Where in the rule is this required? Where are double sensors required in monitors? Also, the rule requires spare parts when the manufacturer identifies parts that could fail. Fine, but MSHA arbitrarily tells us what parts they 'd like to see, without a technical basis or support from the rule. Everything can fail; Using MSHA's reasoning, we should supply 2 of everything because everything can fail.

Other issues still unresolved are approval plates, how to approve a part of a part, who can initially set-up a unit, who can train miners on using chambers and I could go on. Why do you think it's been 7 years and only a few items have received approval? MSHA is it's own worst enemy. It takes MSHA months to reply to technical questions that they originally brought up. Take for instance using certain stainless lines in oxygen systems and the use of valves and regulators . Even today I'm reluctant to place an order because MSHA is still questioning parts that have been USED FOR YEARS. MSHA will not tell me what is OK. They tell me to discuss things with the part manufacturer, who says it's OK, but MSHA still will not approve...Im at a loss. As recent as a few weeks ago, even Wendell Hull (oxygen systems experts) reached out to MSHA asking them to accept their findings on a certain valve. And, there are thousands of these valves currently in use in refuge units. These are not brass components, but accepted retrofit parts. So, what now, another retrofit to the retrofit? To my knowledge, MSHA has yet to make a determination on what valves and regulators are acceptable, yet these units are being used and other approvals are in the balance...more confusion and indecision. MSHA needs a leader. Please tell us what is needed.

Manufacturers have spent millions of dollars and mines have spent billions on this program. Not one life has been saved and there is no confidence that MSHA knows what it is doing or what MSHA will do next. NIOSH continues to research and recommend to MSHA, but MSHA is unwilling to accept NIOSH recommendations. Also, MSHA is unwilling to accept

testing done by NIOSH for approval purposes. In my opinion, NIOSH is the perfect testing entity. Why will MSHA not work with NIOSH?

The confusion and indecision with this program has been occurring since day one. Early on one manufacturer was told they could test their structure for 15 psi using an air bag. Only months later, after thousands of dollars were spent, the manufacturer was told this procedure would no longer be acceptable. To date, this chamber is still not approved. Examples such as this are why manufacturers have not been able to meet deadlines. I encourage the Asst. Sec. or others UP the chain of command to meet with manufacturers and confirm what I am saying. This confusion is only proven by the fact as late as a month ago MSHA still needed to issue additional Q&A's.

Now I'm hearing the MSHA Chief in charge of these approvals got promoted to Chief of the Center and currently holds both positions. WOW. Can't do one job well so you get promoted to do even more at a higher level, the federal way. That's as bad as having Ms. Silvey speak (yell) on technical issues during the rule making process.

It is commonly known that some manufacturers are scrutinized much, much more than others. I would ask an investigation occur and look at the level of detail that MSHA considers in ALL approvals. I'm sure you will find one manufacturer in particular has been shown preferential treatment. There are many inconsistencies in the program; no checks and balances exist, only what MSHA feels is OK today, and that will surely change tomorrow.

Also in question is why MSHA selectively chose to only have certain manufacturers address temperature issues when they knew all chambers and manufacturers struggled with this matter. Some manufacturers were required to spend tens of thousands of dollars to address the matter which resulted in having their products derated, while others got a pass. Nothing. Those other companies were not even questioned. Something stinks! Please look into this

matter.

Also being questioned is why MSHA did not charge everyone for time at the beginning of the program, but charge now. Did they charge everyone the same? When I dealt with the other program they charged everyone the same. This program did not charge, then charged. Again, something stinks.

This may be a good point to address program integrity. It is widely known throughout industry that Mr. Epperly was convicted of perjury in his previous capacity. Point being is check what he says closely.

I believe MSHA has good people, but they need direction. I've spoken with many of them and I get different answers when asking the same question of different folks, if I can get a direct answer at all. Most of the time it seems like questions need to be answered directly by Mr. Epperly. We need decisions, directions and clarity.

So, my suggestions for improving this program include:

Establish a clear and concise framework detailing what is required for an approval.

Communicate clearly to applicants what is needed.

Make it simple for the applicants to know what is needed.

Train MSHA so they understand what is needed.

Accept information from 3rd party experts, which as I understand is what Part 7 is all about.

Accept NIOSH research.

MSHA has made the use of the units way to complicated and difficult to use because of useless requirements- proved by the fact that user manuals are 50 pages or longer. What miner can remember 50 pages of stuff to save his life?

This letter is partially a cry for help in dealing with these approvals. From the outside it appears as though MSHA does not want to approve units. If a program did not want to approve units, they would act exactly as MSHA is acting.

The entire brass issue is another example of MSHA's failure to lead. In every case MSHA fell back on WV to make requirements, notify mines etc. But it was MSHA that investigated the failures did the failure analysis through OSHA and drove the entire refit process. But anytime we spoke with MSHA they said it was WV requiring changes. Is MSHA that afraid to lead?

Unfortunately, I am unwilling to sign my name as I have approval currently under review. I am concerned my that my honest and less than complimentary comments will negatively affect those applications. But please know my comments are true. Check these allegations!

If someone would audit the program you will see what I say is true. Therefore, I'm sending copies of this letter to others in addition to the Office of Standards with the hope that an investigation will occur resulting in justice for me and others along with saving the lives of miners in the future. MSHA is wasting the time and money of manufacturers, mine operators and tax payers with an inefficient and confusing program like this.

The Obama Administration is killing coal. Just let coal die if you want, but please don't use the

refuge manufacturers as your pawns to kill it quicker.