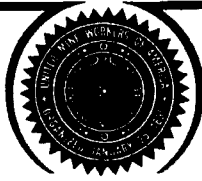


United Mine Workers of America



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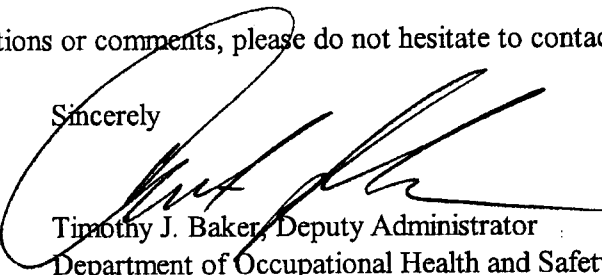
Mine Safety and Health Administration
Office of Standards, Regulations and Variances
1100 Wilson Boulevard, Room 2350
Arlington, VA 22209-3939

Patricia Silva, Director

The attached comments represent the views and concerns of the United Mine Workers of America regarding the Agency's Mine Rescue Teams and Equipment; Proposed Rule. The Union will be happy to answer any questions that these comments raise with appropriate representatives of MSHA or to expand on any comment that requires additional clarification.

If you have any questions or comments, please do not hesitate to contact my office.

Sincerely


Timothy J. Baker, Deputy Administrator
Department of Occupational Health and Safety

1219-AB53-COMM-24

United Mine Workers of America
Comments
on the
Mine Safety and Health Administration's
Proposed Rule
Mine Rescue Teams and Equipment

The United Mine Workers of America (UMWA or Union) is pleased to have the opportunity to offer these comments on the Mine Safety and Health Administration's (MSHA or Agency) Mine Rescue Teams and Equipment; Proposed Rule. The Union will offer some general comments and also intends to place comments on the record in a manner that corresponds to the Agency's writing of the Proposed Rule.

The UMWA is very concerned that the Agency has either misunderstood the directives of Congress regarding mine rescue teams or decided to ignore its mandate. It is apparent in the first paragraph of the preamble that the regulators at MSHA did not understand the directives of Congress. The preamble correctly states, "The goal of the MINER Act is to improve the safety of mines and mining." However, what the agency has determined to be the core of their legislative mandate with regard to mine rescue teams is deficient.

The Union would agree with MSHA that, "To accomplish this goal, the MINER Act includes provisions to improve mine emergency response time, improve mine rescue team effectiveness, and increase the quantity and quality of mine rescue team training." While these stated facts represent a part of the overall directive of Congress, they by no means cover the scope of the mandate. In fact, the proposed rule does not do accomplish some of the critical aspects laid out in the legislation to enhance the current mine rescue team system. In particular the proposal does not effectively encourage employers to create new mine site rescue teams, nor does it implement a system by which the Agency can objectively evaluate and certify mine rescue teams. These two issues were the cornerstone for this section of the MINER Act, but MSHA chose not to codify the wishes of Congress into the regulation.

The Agency has avoided writing a more comprehensive regulation, as was the intent of all parties involved, by citing a lack of legislative history. There is no doubt that the MINER Act does not have the extensive history as the federal Mine Safety and Health Act of 1977, however, there are credible resources MSHA could and should have utilized in order to create the proposed rule. In order to accomplish what Congress broadly defined regarding mine rescue teams the UMWA suggests the Agency table the current proposal and immediately meet with the parties who were engaged in the drafting of the legislation. This would afford the Agency the insight it needs to properly address the matter and ensure the intent of the legislation is met.

The Union does not believe the proposed rule should move forward as written and identifies the follow inadequacies and omissions as the basis for that determination. The UMWA will address these concerns in the sequential order MSHA has written the proposed rule.

New Subpart B and the reorganization of Part 49 (p-51321)

The Union will not offer specific objections to the Agency's decision to implement a section that deals specifically with underground coal mine rescue teams. The UMWA has offered comments on a variety of legislative, regulatory and policy initiatives that it believes enhances the health and safety of all miners, including metal/nonmetal miners. However, in decisions regarding a separate standards for different industries the UMWA would urge MSHA to be cautious of the approach and aware of the precedent it may be establishing.

The UMWA would seek to be involved in all discussions associated with such regulatory considerations, but urges MSHA to carefully consider the views of the miners and their representatives within those industries.

The UMWA does not believe it is practical to move forward with this approach until these entities have been extensively consulted.

Differing approaches to providing Mine Rescue Services

The intent of the legislation was to increase the number of qualified mine rescue teams that would be readily available to mine operators whenever they are needed. The Congressional mandate requires the mine operator to have two teams available at all times when miners are underground. Different operators will employ different strategic plans to comply. The MINER Act specifically cites options as including mine site, composite, contract and state sponsored teams. Mine operators may use whatever method they deem most appropriate for their operation. The mine's specific plan could incorporate a combination of any of the approved means, with some necessary restrictions.

All rescue teams must meet the minimum criteria to be used in a rescue or recovery operation including training requirements, MSHA certification, participation in rescue contests and others.

In the case of first responders, they must be readily available at all times when miners are underground, located within one-hour travel time from the mine rescue station and they must have practiced at the facility they are assigned to service the required number of times.

Given the possible manpower needs in a given situation the mine operator could utilize a variety of different teams. The Union would suggest that based on the magnitude of the event the operator could employ every type of team permitted by the rule.

However, as noted previously teams that do not meet the on-site training requirements cannot be used as first responders.

Section 49.11 Purpose and Scope (p-51321)

(Table – Visual Summary)

The Union does not object to the Agency creating a table to assist mine operators in understanding their compliance obligations. However, MSHA must resist oversimplifying the necessary information. There is a real risk that doing so may lead to a misunderstanding of the requirements and the potential that miners are not receiving the mine rescue coverage they are entitled to under the law and regulation.

(Substitution for Training Requirements)

The Union does not believe that job duties, no matter what the specific duties entail, should allow any mine rescue team member to avoid on-site or specific mine rescue team training. Most team members are highly skilled and motivated individuals with a greater than normal understanding of mining practices, techniques and plans. However, the fact that each mining operation is different, a fact that mine operators continually commented on, should be recognized in this situation. The duties of a single team member, even if the member is an inspector, cannot adequately prepare the entire team for a rescue or recovery mission. If the rescue team is seeking first responder status at any operation then training in mine conditions at each such operation, as is specified in the MINER Act, must be done. This will ensure the team is familiar with the conditions at each mine and that the entire team will be able to perform its duties when an emergency occurs.

Section 49.12(b) Alternative Composition for Anthracite Mines (p-51321 – 51322)

The Union is not in the habit of advocating nor supporting exceptions or modifications to regulations for any reason. The reality is that when such exceptions are granted others who do not need such relief “whipsaw” the issues to permit them to end up with a lesser standard than they otherwise should be required to meet.

However in this specific instance, based on the nature of the anthracite industry and its peculiar characteristics, the UMWA would not object to the rescue team configuration that is already being implemented via the petition for modification process, being codified by regulation. The Union would qualify this approval by stating that only if all the conditions outlined in the preamble (including; narrow widths and constructed opening, limited hoisting capacity, seam pitch, short travel distance, limited employment at the operation, limited or zero mechanization and the absence or very limited use of electrical power underground and none at the face or in the section) actually are present so long as the modification is in force. Immediately upon MSHA learning that any of the conditions changed, the particular operation must be required to meet the full range of the mine rescue standards established for the rest of the coal industry.

Section 49.12(c) Alternative Experience Requirements for Members of Contract Mine Rescue Teams (p-51322)

The purpose of this section of the MINER Act was to assure miners that there will be no more situations where under experienced, under trained and unqualified “mine rescue teams” are under contract to serve as mine rescuers. Recent events have demonstrated that simply having a team arrive on the mine property does not facilitate rescue and recovery operation. This fact is especially evident among contract mine rescue teams. The language of the regulation must eliminate this possibility.

The Union is adamantly opposed to any attempts by MSHA to redefine or alter the specific language and intent of the MINER Act. Requiring any miner who is a member of a rescue team to have 3 years practical underground experience in the previous 10 years is not overly burdensome and should not be altered. Likewise, permitting an outside employee who “regularly” works underground to claim such time to meet the experience requirement is unacceptable.

The requirements in the MINER Act were prescriptive for a reason. Congress, industry and miners all realize that MSHA has a history of lessening legislative mandates through regulation. By proposing this alternative the Agency is only reinforcing its past bad decisions. This language must be eliminated and MSHA must follow the letter of the law.

Section 49.12(f) Available within one-hour Ground Travel From the Mine Rescue Station (p-51322)

Based on the new requirements of the MINER Act that teams be within one-hour ground travel time from the rescue station to the operation(s) they are servicing, it is very likely some mine rescue stations will need to be relocated. This may be to a location closer to the particular operation or to a central location in closer proximity to several mines. If more rescue stations are required to comply with the MINER Act, then more rescue stations must be created.

The Union does not see this as causing undue hardship, either financially or practically on the operator of the mine rescue team. The potential benefit of having these teams closer to the mine and therefore on-property sooner in the event of an emergency far outweighs other considerations.

The UMWA is confused by MSHA’s question regarding, “how compliance will be achieved?” The language of the MINER Act is unambiguous with regard to the response time from the station. In order to meet this requirement, the operator may need to consider several options including moving the rescue station or creating additional teams with facilities closer to the operation.

The make-up of such teams are outlined in the MINER Act and offer mine operators several options for their creation. Mine-site, composite, state and contract teams are all possible mine rescue team compositions available to the operator.

Section 49.13 Alternative Mine Rescue Capability for Small and Remote Mines (p-51322)

The Union does believe the Agency is overreaching its authority with regard to this matter. While there are alternative means for providing mine rescue teams to “truly” small operations the language of the MINER Act does not authorize special consideration simply because a mine is “remote”. A remote operation that employs so many miners that it cannot be classified as small must have two rescue teams readily available at all times when miners are underground. That is what the MINER Act requires. An operator only has options when it comes to how (not if) such teams must be created, considering the options outlined in the MINER Act.

Section 49.18(b) Training for Mine Rescue Teams (p-51323)

The Union agrees with the recommendations of the Mine Safety Technology and Training Commission for a minimum of 96 hours of annual training, (8 hours per month for mine rescue teams). We would urge MSHA to adopt this requirement in a final rule.

The UMWA must point out that the 96 hours should be considered the minimum training requirement and does not preclude additional training that may also be required by the MINER Act. In particular mine rescue contests required by the Act should not be considered part of the 96 hours. These exercises are designed to increase rescue team skill levels and to facilitate interaction between various rescue teams.

There will also be a need to increase training requirements based on the type of team an operator fields and the number of operations they are assigned to service. For instance, a contract team responsible for four separate mines would be required to train at each of these facilities quarterly. This would require the team to practice sixteen times per year in order to comply with the MINER Act. It should be obvious that this training regiment would require more than 96 hours and operators should be prepared to require and conduct this additional training.

Section 49.18(d)

The Union agrees with the Agency’s determination on experience for mine rescue team instructors. We also understand why it is necessary to initially “grandfather” current instructors who were certified prior to the effective date of the rule. However, the Union does not believe the process, as it currently exists, should be permitted to continue unchanged. The practice by MSHA of lifetime certification for trainers must be changed. MSHA should require trainers to demonstrate routinely their skill level and understanding of the issues and technology with regard to mine rescue.

Section 75.1501 Person Knowledgeable in Mine Emergency Response (p-51324)

The Union is concerned with MSHA’s statement that, “The proposed rule is performance oriented and, therefore, does not prescribe the duration of this training.” Without formalizing the training it is very likely to become “tailgate” or between shift instruction rather than comprehensive training. This would

be unacceptable and could lead to a failure of the system at a critical time. In order to avoid this problem MSHA must establish and require a standard minimum curriculum for training along with recommended times spent on each item, as part of an overall response plan.

Section 49.20 Familiarity with Operations of Covered Mines (p-51324)

While the Agency's definition of "familiarity" is acceptable for the knowledge a mine's employees would possess in order to safely perform their job duties at the mine. It does not adequately describe the level of knowledge a mine rescue team member should possess in order to carry out their rescue and recovery duties.

Mine rescue training must be conducted in-mine as required by the MINER Act and should include simulated events or activities that will prepare each team member to function at the highest level possible in that mine's environment. Working in the mine on a daily basis does not qualify the individual as knowledgeable should they be required to perform rescue or recovery activities. The Agency has attempted to reduce the training to the least common denominator, rather than raise the bar to an acceptable level.

While MSHA accurately notes that training will require different amounts of time depending on a variety of circumstances it does not state how training will be evaluated to ensure it is adequate. The Agency must look at both pieces of this training to be certain rescue teams are prepared to perform as required in the event they are activated.

Section 49.20(a)(2) Participation in Two Local Mine Rescue Contests (p-51324 – 51325)

The Union does not support MSHA's determination that a two-day event should be considered adequate to fulfill the mandate for attending two mine rescue contests. The Agency is treating this requirement, much like it does with other mandatory training, by attempting to accomplish too much in a very limited time frame. The real problem is that mine rescue teams not only need to complete the rescue exercise, they also need time to evaluate their performance and discuss in depth the training that they just completed. Holding back-to-back events is counterproductive and should not be permitted.

MSHA's argument that such training would minimize cost and miners being absent from the operation are not germane. MSHA's primary responsibility, and the overriding intent of the legislation, is to enhance to the greatest extent possible miners' health and safety. Let the industry worry about costs and absenteeism; such challenges would be shared equally and constitute a cost of coal mining.

Section 49.20(b) Requirements for Types of Mine Rescue Teams (p-51325)

The Agency does a good job of defining the types of teams the MINER Act determines to be acceptable for the operator to employ. However, it then asks for comments on what is available to small mines and if other types of teams should be permitted, "such as teams consisting of one miner per covered operation."

The Union will not offer a lengthy response to this question because it does not consider it to be valid. The MINER Act specifies the type and make-up of rescue teams mine operators may utilize. MSHA does not have the regulatory authority to consider other options. A regulation in conflict with the statutory language would be unlawful.

Knowledge of Operations and Ventilation at the Covered Mine (p-51325)

The Union has addressed the assumption on the part of MSHA that various activities or the fact that an employee works at a specific operation meets the requirement for them to be “familiar” with the operation. Again, the Union would state that type of familiarity may be sufficient for the miner to work safely in the mines environment, but it does not meet the level of knowledge required to perform mine rescue duties.

The Union is also opposed to MSHA’s determination that mine evacuation training can be considered sufficient for any of the required mine rescue training. Mine rescue training must be conducted in-mine as required by the MINER Act and should include simulated events or activities that will prepare each team member to function at the highest level possible in that mine’s environment. Working in the mine on a daily basis does not qualify the individual as knowledgeable should they be required to perform rescue or recovery activities.

Mine Rescue Team Training at Each Covered Mine (p-51325)

The Agency has once again managed to take a relatively straight forward mandate of Congress and confuse the entire issue. The MINER Act does require mine rescue teams to participate in training at each covered mine. This training is required a specific number of times annually depending on the type of team employed and the size of the mine. The Agency made the unexplainable leap that “at least one of the training sessions must be underground.”

It was clearly the intent of the drafters to ensure meaningful training was conducted at each of the operations. Such training must be done at the mine and in the underground environment each time. To do anything less would violate the purpose, if not the language of the law. The Agency does not possess the authority to cut the training of mine rescue teams by reducing the requirements of the MINER Act in the manner proposed here.

The Agency also makes the assumption that requiring semi-annual training at small mines places an “added burden” on these operations. MSHA should understand that its role as an enforcement agency is to regulate the industry within the framework Congress has laid out.

Rescue teams assigned to service small operations must receive the prescribed training at the mine site. Such training must be conducted in the underground environment and to the extent possible simulate actual mine rescue activities. This is necessary to protect miners at small operations.

Integration of Mine Rescue Team Training Requirements (p-51325)

The UMWA would caution MSHA when it considers what constitutes mine site training for purposes of the MINER Act and what the purpose of the mine rescue contest is. These two issues while offering different types of training models and environments are also mutually exclusive. For instance a contract team at a large operation would be required to attend two mine rescue contests annually and participate quarterly in mine site rescue team training. Such training must be conducted in the underground environment and to the extent possible simulate actual mine rescue activities.

Section 49.50 Certification of Mine Rescue Teams (p-51326)

The proposed rule does not create a systematic and objective means to certify mine rescue teams. The Agency has instead created a method for mine operators to conduct internal evaluations and paper compliance.

The intent of the MINER Act was to have MSHA develop specific criteria that mine rescue teams would be required to master before they could be certified. This certification would be issued by MSHA only after the team was able to demonstrate their competence to the Agency. The proposed rule does not require any such objective review or testing of the mine rescue teams like Congress intended.

This section does not enhance the skills of the teams and would permit unqualified teams to be utilized at mining operations. This approach is unacceptable because it would compromise miners' safety. It is important that MSHA develop standards for measuring the competence of mine rescue teams and then require such teams to demonstrate their mastery of the required skills.

Section 49.60 Requirements for a Local Mine Rescue Contest (p-51326)

The Union does not object to most of the criteria established in the proposed rule for rescue team contests. However, we do question whether permitting competitions to be created with as few as three mine rescue teams participating is adequate. The purpose of the contests are multifaceted and include enhancing the participants knowledge and skill levels, as well as providing a forum for interaction between various teams from different operations. This interaction has proven to be very important in actual emergency situations. The Union would suggest MSHA think on a broader scale when determining what is the appropriate minimum for teams participating in a contest.

The UMWA would also suggest MSHA should use these events to assess mine rescue teams for certification. This would ensure teams seeking to service mining operation have been properly trained.

Alternative to Participate in Local Mine Rescue Contests (p-51327)

The Union does not understand how MSHA determined that the MINER Act permitted substitute activities in-lieu of participating in a contest. The requirement for participation is clear and therefore must be followed. The Union does not object to allowing for additional training, but it cannot replace contests or the required in-mine training.