

June 29, 2006

Robert Stone, Acting Director
Office of Standards, Regulations & Variances
Mine Safety and Health Administration
U.S. Department of Labor
1100 Wilson Boulevard, 21st Floor
Arlington, VA 22209-3939

Re: Comments on Proposed Rulemaking
RIN 1219-AB46

Dear Mr. Stone:

Foundation Coal Corporation presented testimony on The Emergency Temporary Standard (ETS) at the public hearing held in Charleston, West Virginia on May 9, 2006. We offer the following additional comments to the Mine Safety and Health Administration concerning the proposed rule that is its Emergency Temporary Standard. In addition note Foundation Coal Corporation's support of comments and testimony submitted by National Mining Association (NMA), West Virginia Coal Association, and the Pennsylvania Coal Association (PCA) ("ETS"). The ETS was published at 71 Fed. Reg. 12252-12271 (March 9, 2006).

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Foundation Coal Corporation is the fifth largest coal company in the United States with operations in Pennsylvania, West Virginia, Illinois and Wyoming. Our underground operations include large longwall mines, multiple continuous miner mines and smaller continuous mine operations. Foundation Coal Corporation is interested in seeing that both the ETS requirements as well as the recently enacted MINER Act are implemented in a manner that provides for an increase in mine emergency preparedness while at the same time providing for the most efficient regulations as practicable.

As an initial comment, we would note that the proposed rule must be reconciled with the provisions of Miner Improvement and New Emergency Response Act of 2006 (“Miner Act”) because some of the provisions of the ETS are inconsistent with the new statutory provisions. This needs to be done before the final rule is promulgated because many provisions of the Mine Act are self-executing and will go into effect in 60 days.

Part 50 – Notification

There has been ample testimony, including Foundation Coal Corporation’s testimony at the May 9 public hearing concerning the problems associated with the

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language in the ETS setting a maximum 15 minute window for the operator to contact MSHA in the event of an accident that is determined to be immediately reportable.

Regardless of how the final notification standard is written it is incumbent upon MSHA to develop a “one number” call system rather than the call chain set-up in use today. The mine operator has a requirement to notify not only MSHA but the appropriate state agencies, the company officials and whatever local Emergency Services are in place for that location. All of these groups have “priority” and all need notified “immediately”. It is MSHA’s responsibility to provide a one number call center to accept calls.

Further, as noted in my testimony any call made within a 15 minute time frame will include minimal details. MSHA must reevaluate its practice of issuing 103(k) orders over the telephone whenever MSHA is being notified of an active emergency. When there is a need to preserve an accident site for a follow-up investigation and where no potential harm to personnel or equipment is involved then the preservation of the accident scene is a standard practice. My concern with the issuance of a 103(k) order over the phone is when the operator is dealing with an “active” emergency such as a fire, inundation, explosion or roof falls that may continue to fall if actions are not

taken to keep the fall from continuing. It is imperative that MSHA allow the operator to implement his emergency plan while MSHA travels to the mine site. Actual orders by MSHA limiting the operator's activities in handling an emergency should only be made by a qualified MSHA person who is on site.

Part 75 – Mandatory Safety Standards

A. Proposed Revisions to Section 75.380(7) (i)/Lifelines

Foundation Coal Corporation does not object to the installation of lifelines in the primary escapeway as a way to improve and facilitate emergency evacuations or in the secondary escapeway. We believe, however, that an exception should be made for travelways that contain track or belt structure that could be used in lieu of a lifeline as a guide out of the mine. There are several reasons for this. One, the track or belt structure provides a guide out of the mine. Further, in travelways where equipment is operated, lifelines are often difficult to maintain. They may also pose a hazard to miners on equipment. If an emergency requires evacuation, the miners will be riding in a mantrip in the travelway. Under those circumstances, a lifeline will not be used. Escapeways without belt or track would have lifelines and can be used to exit the

mine. It should be noted that the State of West Virginia recognized this circumstance in its regulations and does not require the lifeline in a belt or track escapeway.

Further, enforcement of the ETS has indicated there are problems with interpretation of the standard. MSHA has interpreted the standard as requiring the lifeline to be in the center of the entry. That is not feasible in mines in lower coal seams or in high coal seams.

MSHA personnel have also indicated initially that hanging the lifeline below the high voltage cable is prohibited. This precludes location of the lifeline in a portion of the entry where the likelihood of inadvertent damage is reduced. Such location poses little hazard in the event of an emergency evacuation. One District has indicated it will not prohibit hanging the lifeline from the high voltage cable but this should be established in the new rules. As noted in my testimony, this issue should be clarified by the Agency.

The standard will need to take into account the fact that the Miner Act requires lifelines to be flame-resistant. Further, the standard needs to permit the use of alternatives to lifelines such as floor mats, fish plate reflectors and laser devices as

discussed in the WV Mine Safety Technology Task Force Report. Further, the standard should not be prescriptive as to the type of directional devices.

B. Proposed Revisions to Section 75.1502(a) (1)

Foundation Coal Corporation supports the language under Section 75.1502(a)(1)(iii) and (iv), that address procedures for evacuating miners “not required for mine emergency response” and the “[p]rocedures for the rapid assembly and transportation of necessary miners, fire suppression equipment, and rescue apparatus to the scene of the mine emergency.” To prevent full blown mine emergencies, the mining industry directs their employees to fight fires as the first line of defense. One of the principles of firefighting is to address the fire as quickly as possible. To prevent the fire growing and endangering miners during later firefighting efforts, it is necessary for MSHA to permit such efforts to proceed expeditiously and without evacuating necessary personnel. It is why we train people in firefighting. It is appropriate that MSHA acknowledge this fact.

As noted in our comments under notification the agency must avoid issuing 103(k) orders that hinder initial mine emergency efforts made by the operator. MSHA must also ensure that its personnel are familiar with the mine’s firefighting practices.

C. Proposed Revisions to Section 75.1502(c) (1)/Training Interval

The ETS utilizes the standard interval for fire drill training and mine emergency training as “not more than 90 days.” With the addition of more extensive training requirements in the ETS, Foundation Coal Corporation reiterates its comments made at the May 9, 2006 public hearing. At the public hearing Foundation recommended that this timeframe be modified to “once each quarter.” This change will enable the operator to train more efficiently and will not have any negative effect on the actual training standard. It will permit easier recordkeeping. It reduces the potential that a miner will inadvertently miss training a particular miner.

Our large mines will be training over 400 people on SCSR transfers, escapeway systems, firefighting and evacuation drills. This can all be most readily accomplished quarterly. By providing timing flexibility, crews can be pulled systematically for training. In addition, personnel who transfer from a mining crew to an outby job can be more easily trained with their new crew rather than trained in an area that they don't work at or trained separately from their new crew because of an artificial timeframe. Further operators are looking to incorporate training that requires more

complex planning. This training includes fire extinguishment and SCSR donning and smoke travel. Any of these types of training will take more time at larger mines. Allowing for the entire quarter of at a minimum an entire month to complete each training cycle is a “win/win” for everyone involved. For MSHA to not make this change in the timing of training would be a mistake that is not beneficial to the operators or the miners.

D. Proposed Revisions to Section 75.1502(c) (2)/Training

Section 75.1502(c) (2) requires that all miners “travel” the entire escapeway every 90 days. Section 75.1502(c) (2) uses the term “travel.” Such term by its common definition would permit travel by mine vehicle. MSHA in their questions on the ETS asked if travel should be changed to “walk”. The standard should make it clear that traveling of an escapeway may include travel in a vehicle. The Compliance Guide, Volume II, specifically recognizes this, but it should be placed in the standard. In many of Foundation Coal’s mines physical conditions such as height of the coal seam or steepness of the grades make such travel onerous and it should be clarified that “travel” may include travel by mine vehicles.

The difficulty, however, is that some escapeways are not travelable in a mine vehicle. It is for this reason that requiring all miners “to travel” the entire escapeway every 90 days as part of the training requirement is not appropriate.

Requiring all miners to physically travel escapeways would fail to recognize the physical condition of the mining workforce. The coal industry has an aging workforce whose average age is in the early 50s. The ETS acknowledges “that miners may have to travel through long and difficult underground travelways.” This statement confirms that walking escapeways is laborious and could cause illnesses or injuries. Such miners would be able to exit the mine in an emergency but should not be required to suffer for days afterward. This is not the most effective training.

Foundation Coal Corporation recommends that MSHA should revise its proposed evacuation drill requirements to make it clear that miners are allowed to travel by personnel carriers or to require only that they walk short distances to the ventilation split where expectation training could be administered. This modification would achieve enhanced training and education, while still allowing for training on the condition of escapeways and locations of lifelines and stored SCSRs, where applicable.

Further, physically traveling the escapeway is not effective training. It wastes valuable training time for a rote exercise. NIOSH studies of mine emergencies and escaping decisions made by people indicate that issues such as notification, “the communication’s triangle”, smoke obfuscation, crew decision-making etc. were a factor in the ease of escape. Knowledge of the escapeways is clearly important, but this knowledge does not need to be acquired by a rote walking exercise of every employee each and every quarter of the year. Training on escapeways to include the decision making needed at critical junctures in the mine system is far more important.

The Sago accident has made it clear that miners need to evaluate their routes of escape. The miners at Sago who escaped clearly knew the location of the escapeways, as did the miners who barricaded themselves. The issue there, as in many situations, is for the miners to evaluate the safest and most feasible route out. The more logical method for training miners on escapeways would include expectation training, i.e., instructing miners on: 1) the location of escapeway entrances from their work stations; 2) the location of the lifeline systems and stored SCSRs; 3) the physical issues in the escapeways (i.e., areas that are low or are more difficult to travel

through); and 4) the locations where important escape decisions must be made and the thought process that must go into the determination of what route to use. This type of training is valuable and clearly outweighs the time needed for each employee to travel the escapeway every quarter.

The need to travel the escapeways is also vitiated by the fact that lifelines will be installed. Given the imposition of this requirement, it renders unnecessary travel all the way out of the mine.

Foundation Coal Corporation urges that Section 75.1502(c)(2) be changed to require the operator to provide quarterly training to all employees on escape routes, emergency escape scenarios, SCSR storage locations, and areas in the escape system where decisions for escape may need to be made.

E. Proposed Revisions to Section 75.1502(c) (2) (ii)/SCSR Training

Section 75.1502(c) (2) (ii) requires an operator to provide training or donning and use of SCSRs to be performed during evacuation drills. This is not feasible or practical. Donning and transfer training on SCSRs can be accomplished more effectively on the surface. While MSHA recognized this in its “Emergency Temporary Compliance Guide,” the language in 30 C.F.R. § 75.102(2) (c) (ii) needs to

be changed because it states the evacuation drill shall include such training. To avoid ambiguity, the SCSR training in Section 75.1502(c) (2) (ii) and (iii) should be made into a separate requirement to be performed on a quarterly basis.

Section 75.1502(c) (2) (iii) is unclear where an operation may have multiple types of SCSRs are permitted to train for varied transfers each quarter. For example, an operator may provide a belt worn unit (SR 100) and store other SR 100s as the “additional rescuer.” This operation may also store in caches Ocenco units. In theory, the worker could transfer SR 100 to SR 100, SR 100 to Ocenco, or SR100 to Ocenco and back. The standard should be clarified to only require one type of transfer each quarter.

F. Proposed Revisions to Section 75.1714-2 and 75.1714-4

1. Signage

While a good faith desire to improve the existing standards is apparent throughout the ETS, in many instances the regulatory language is restrictive to the point we are concerned it could be counterproductive. For example, the term “SCSR” is an industry wide term of art that is used throughout the ETS, yet Section 75.1714-2(f) requires the word “SELF-RESCUER” or “SELF-RESCUERS” be used on storage

location signs. Requiring mines with existing “SCSR” storage location signs to install signs stating “Self Rescuer” is prescriptive and inappropriate for a regulation.

2. SCSRs in Primary and Alternate Escapeways and on Personnel Carriers

Section 75.1714-4 (b) requires the equivalent of two one hour self rescuers on every personnel carrier. Foundation Coal believes that this language should be changed to reflect the entire scope of the new ETS. This requirement limits the options for an operator who would prefer for ergonomic reasons to wear a smaller unit that is not a one hour unit. The ETS regulation should state that each personnel carrier may store on the vehicle one hour of oxygen for each person traveling on that vehicle provided that the travel distance to exit the mine on the vehicle’s travel route is either no further than a average miner can walk in 30 minutes or that the additional caches as required in Section 75.1714-4(c) are spaced so that the personnel carrier’s travel route is within a distance of no further than an average miner could walk in 30 minutes. This change in the regulation would allow for the wearing of a smaller more ergonomically correct SCSR, and would still provide for the protection provided by the belt worn unit (presently 20 minutes) as well as the one hour additional unit on the

vehicle. At no time would the people traveling on the personnel carrier be further than 30 minutes from the stored units. This change will also help to further the development of belt-worn units that are comfortable for the miners that need to wear them but have less than a one hour supply of air.

Section 75.1714-4(c) requires additional SCSR storage in the primary and alternate escapeways to augment other SCSR requirements when these requirements do not provide enough oxygen for all persons to safely evacuate.

Where the operator determines additional SCSRs are required, the operator must submit a plan setting forth the location, quantity and type of these additional SCSRs and may be required by the district manager to demonstrate the plan's adequacy.

There have been a number of proposals as to how the distance of storage caches is to be determined. MSHA proposed a method using heart rate calculations and many operators argued that the NIOSH chart, which has been utilized previously by MSHA is currently being utilized by the State of West Virginia should be employed. The Miner Act addresses the issue by requiring caches "at a distance of no further than an

average miner could walk in 30 minutes.” We assume that the NIOSH chart may be used to provide guidance in this regard.

Based on the plain language of this provision and the preamble, a number of operators have proposed, as an alternative, the use of airlocks located between adjacent escapeways for storage of SCSRs, along with other important emergency supplies. Foundation Coal Corporation supports this position. The use of an airlock has the additional benefit of providing employees with an area isolated from the main air courses for the transfer of SCSR units. Another alternative proposal is to build a SCSR storage unit into the stopping to permit stored units to be accessed from either escapeway. Both of these proposals are simple, functional and proven mine-worthy.

In its guidance documents, the agency has rejected these proposals, taking the prescriptive position that equal numbers of stored SCSRs are required in both escapeways. The stated basis for rejection is speculative and encroaches on the operator’s clearly defined obligations under Section 75.1714-4(c) and should be withdrawn. Section 75.1714-4(c) does not require that identical quantities of additional units be stored both in the primary and alternate escapeway. Instead, this section requires “additional units in the primary and alternate escapeways.”

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Furthermore, the operator's alternatives described above would place the SCSRs in locations that satisfy both primary and alternate escapeway storage. We believe that airlocks using escapeway sized doors for adjacent entry escapeways is an effective system and should not be prohibited.

MSHA stated at the public hearings that the agency would accept an airlock system provided that the airlock is made as seal-like design including submarine doors and surface boreholes. In fact the statement read at the public hearing called this location a "safe haven". This is an illogical mixing of self-rescuer storage and refuge chamber designing that serves both systems poorly. It is more appropriate for the final regulation to allow for a normal airlock design for SCSR storage in adjacent entries.

When viewed collectively, the better system of SCSR protection for workers would include an ergonomically correct belt worn unit that may be of less than one hour duration, coupled with a storage location spaced out as required in the MINER Act. Both the proposed ETS and the MINER Act require at least two hours of air for each worker in the mine, therefore requiring two hours of air on the personnel carriers is unnecessary, provided the storage caches are located in or parallel to the travel route.

Part 48 – Training

In general, Foundation Coal Corporation supports revised training requirements for miners to be contained within Part 48. We believe, however, the training requirements in 30 C.F.R. § 75.1502(c) (2) is misdirected and must be revised in order to most effectively train miners. The provisions of Section 48.11 apply to contractor and visitors. Independent contractor activities can vary widely. Those providing regular or continual services should receive SCSR training comparable to that provided miners who are employees of the operator, while those whose services are on

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an infrequent basis can be accommodated through an alternative means similar to that employed for visitors.

We believe, however, the application of these training requirements to visitors would be better accommodated by providing more flexibility in the manner in which mine operators must comply with such requirements. For example, instead of requiring the actual donning of self-contained self-rescuers (SCSRs), we believe the necessary instruction can be accommodated by alternative means. While we have historically provided limited training on a designated unit to visitors, we are concerned that training on multiple units, for those unfamiliar with the mining environment, will be confusing and counterproductive. We would urge that the final standard be revised to reflect these concerns.

Questions

The Federal Register and the public hearing statements raised certain questions that the agency would like responded to. Foundation Coal Corporation has either responded to these questions in its public statement, the above written statement or as a specific answer below.

1. Reports on SCSR use Foundation Coal Corporation believes it would not be appropriate to require the reporting of the use of SCSRs during an emergency or accident, but it would be appropriate to report units that were alleged not to function properly. Such reporting should be in a form similar to the 7000-1 form and should be required within a 10 day period.

A 90 day period of retention for units believed to have malfunctioned is excessive and that period should be 30 days at most. Further, any standard that addresses this issue should provide specifically for participation by the operator and the sharing of test results with the operator. Otherwise there is no purpose served for the agency to be notified of used or damaged units.

2. Tethers Foundation Coal Corporation believes that tethers should be stored in SCSR storage caches. Storage in a separate location would be impractical. There is no need to design a prescriptive tether requirement. Let each operation determine what type of tether system works best for its operations.
3. Signs Foundation Coal Corporation does not object to a requirement that the signs at SCSR storage areas be made of reflective materials. PCA does not believe that a requirement for a strobe light at the SCSR storage locations is

necessary. It may create additional problems in the presence of methane after an explosion.

4. Filter Self Rescuers Foundation Coal Corporation does not believe that the use of filter self rescuers should be eliminated in situations where a storage plan is appropriate.
5. Reporting of SCSR details Foundation Coal Corporation believes that the gathering and maintenance of data on SCSRs suggested by the ETS will be extremely burdensome in light of the massive number of SCSRs that will now have to be purchased and maintained by operators. Currently SCSRs may have multiple serial numbers on various parts of the apparatus. We do not believe such reporting is necessary for product recalls. Any information of a recall would be widely distributed and would be quickly made known to all operators.
6. Reporting of all fires Foundation Coal Corporation does not support changing the fire notification standard. A 30 minute fire time length is well established. If the Agency chooses to change the definition of accidents to require a different time length for fire reporting then there should be some attempt to

modify the language to not require short duration fires to be reported immediately.

7. Training Records There is no need to keep a checklist or other items for training that was conducted. The ETS requires the names of the miners who participated in the training be kept. That is enough of a record.
8. Readily available locations for SCSRs for non-face workers Each operation will need to address the locations for workers whose job duties require the worker to move around the mine on foot. Some may be required to carry two SCSRs into the mine and to wear one and to store one.
9. Carrying multi-gas detectors The requirement that each individual have a multi-gas detector would be burdensome and difficult to comply with. Section crews and other established groups such as a set-up or tear down section crew could be required to have multi-gas detectors. To require each individual mechanic, supply man, belt cleaner etc. would be difficult.
10. Heart Rate Study and Prescriptive Storage Distances Based on Mining Height
This issue should be moot as the new MINER Act states that the self rescuer

distances are based on the travel distance that an average miner can travel in 30 minutes. It seems the West Virginia chart which was originally developed by MSHA should be the standard used.

11. Lifelines Lifeline design and the system of locating them should not be prescriptive.
12. Expectations Training As we stated at the public hearing and in our written comments, the key to training beyond the basic training is in the timing flexibility. It is vital that MSHA allow for all of the 75.1500 training to be conducted during the quarter rather than on an every 90 day basis.
13. Emergency Type Training under 75.1500 As a general rule it would make sense that all of the various emergency training regulations be incorporated under on section of the law.

The installation of lifelines has made the question of requiring each supervisor to have traveled both escapeways prior to being a supervisor on any section, set-up or tear down moot.

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Thank you for your consideration of Foundation Coal Corporation's position.

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

Very truly yours,

John M. Gallick

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